Office-Supreme Court, U.S.
FILED
MAR 1 8 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1133

TERREBONNE PARISH SCHOOL BOARD, FOR THE USE AND BENEFIT OF THE PUBLIC SCHOOLS OF TERREBONNE PARISH, ROBERT D. STERLING, RUTH L. STERLING AND ROBERT W. O'MEARA,

Petitioners,

versus

TEXACO, INC.,

Respondent,

STATE OF LOUISIANA AND STATE MINERAL BOARD,

Intervenors-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

LLOYD J. COBB
METTERY I. SHERRY, JR.
COBB & WRIGHT
902 Whitney Building
New Orleans, Louisiana
Attorneys for Petitioners

WILMORE J. BROUSSARD, JR.
Houma, Louisiana
HERBERT W. CHRISTENBERRY, JR.
New Orleans, Louisiana
Of Counsel

INDEX

Page

A. OPINIONS BELOW 2

B. JURISDICTION 2

C. QUESTION PRESENTED FOR REVIEW 3

D. STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED 4

E. HOW FEDERAL QUESTION WAS RAISED AND PASSED UPON 8

F. STATEMENT OF CASE 9

G. REASONS FOR ALLOWANCE OF WRIT 12

1. Legislative Intent 14

2. Doctrine of Inherent Sovereignty is not applicable to Section Sixteen 27

H. CONCLUSION 32

I. CERTIFICATE OF SERVICE 33

Appendix:

Appendix "A":
Opinion and Judgment of the District Court 34

Appendix "B":
Opinion of Court of Appeal 51

Appendix "C":
Order of Court of Appeal Denying Rehearing 72

Appendix "D":
Decree of the Supreme Court of Louisiana Denying Review 73

Appendix "E":
Order Extending Time to File Petition for Writ of Certiorari to and including April 7, 1966 74

CITATIONS

Cases: Page

Bagnell vs. *Broderick*, 13 Pet. 436 (1839) 16

Gibson vs. *Chouteau*, 13 Wall 92 (1872) 16, 24

Meyer vs. *State*, 168 La. 146, 121 So. 604 (1929) 20

Pollard vs. *Hagan*, 3 How. 212 (1845) 12, 24

State of Alabama vs. *State of Texas*, 347 U.S. 272 (1953) reh. denied 24

State of Louisiana vs. *Humble Oil & Refining Co.*, 195 La. 457, 197 So. 140 (1940) 13, 14, 29, 31

State of Louisiana vs. Joyce, 261 F. 128 (1919) cert. denied 253 U.S. 484 ..... 14, 20

United States vs. *Holt State Bank*, 270 U.S. 49 (1925) 26

United States vs. *Louisiana*, 363 U.S. 1, (1960) 26

United States vs. *Morrison*, 240 U.S. 190 (1916) 22

United States vs. *Wyoming*, 331 U.S. 440 (1947) 22

Wilcox vs. *Jackson*, 13 Pet. 498 (1839) 16

CONSTITUTIONS AND STATUTES

Constitutional Provisions:

United States Constitution:
Article IV, Sec. 3, Clause 2 ..... 4, 15, 24

Louisiana Constitution:
Article XII, Sec. 18 ..... 6, 13

CITATIONS (Continued)

Page

Statutes:

Federal Statutes:

Act of Congress, May 18, 1796 (1 Stat. 464, Ch. 29) ..22

Act of Congress, April 21, 1806 (2 Stat. 391, Ch. 39, Sec. 11) 5, 11, 14, 17, 31

Act of Congress, February 20, 1811 (2 Stat. 641, Ch. 21, Sec. 3) 14, 18, 19

Act of Congress, March 3, 1811 (2 Stat. 662, 665, Ch. 46):
Sec. 10 ..... 5, 11, 14, 17, 31
Sec. 12 ..... 5, 17

Act of Congress, April 8, 1812 (2 Stat. 701, Ch. 50) 14, 19

Act of Congress, April 14, 1812 (2 Stat. 708, Ch. 57) 14

Act of Congress, April 23, 1912 (37 Stat. 90, Ch. 88) 5, 11, 12, 14, 20, 23, 31

Act of Continental Congress of 1785 (1 Stat. 563) 15

Northwest Ordinance of 1787, Article III 27

School Indemnity Lands Act, February 26, 1859 (11 Stat. 385, now 43 U.S.C. 891) 22

State Court; Appeal; Certiorari, 28 U.S.C. 1257 (3) 3

Swamp Land Grant of March 2, 1849 (9 Stat. 352) 23

Swamp Land Grant of September 28, 1850 (9 Stat. 519) 23

Treaty of Cession, April 30, 1803, 8 Stat. 202 15

CITATIONS (Continued)

Page

Treaty of Fontainebleau, November 3, 1762, 13 Cong. Deb., 24th Cong., 2d Sess., pt. 11, App. 226 14

Treaty of St. Ildefonso, October 1, 1800, 13 Cong. Deb., 24th Cong., 2d Sess., pt. II, App. 229 15

State Statutes:

L.S.A.-R.S. 30:124 4

L.S.A.-R.S. 30:152 ..... 4, 7

L.S.A.-R.S. 30:154 ..... 8, 13

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No. .

TERREBONNE PARISH SCHOOL BOARD,
FOR THE USE AND BENEFIT OF THE
PUBLIC SCHOOLS OF TERREBONNE PARISH,
ROBERT D. STERLING, RUTH L. STERLING
AND ROBERT W. O'MEARA,
Petitioners,

versus

TEXACO, INC.,
Respondent,

STATE OF LOUISIANA AND
STATE MINERAL BOARD,
Intervenors-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

The petition of Terrebonne Parish School Board, for the use and benefit of the public schools of Terrebonne Parish, Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara, Plaintiffs-Appellees below, respectfully represents:

A.

OPINIONS BELOW

The opinion of the 17th Judicial District Court for the Parish of Terrebonne, Louisiana (R.153; App. A, *infra,* p. 34 is unreported. The opinion of the Court of Appeal, First Circuit, (R.181; App. B, *infra,* p. 51) is reported at 178 So. 2d 428. A rehearing was denied by the Court of Appeal (R.209; App. C, *infra,* p. 72). No opinion was rendered by the Supreme Court of Louisiana. Its order (App. D, *infra,* p. 73) denying Petitioners' application for writ of certiorari to review the opinion of the Court of Appeal, First Circuit, is reported at 179 So. 2d 640.

B.

JURISDICTION

The opinion and decree of the Court of Appeal, First Circuit, (R. 181-195; App. B, *infra,* p. 51) setting aside the judgment of the 17th Judicial District Court for the Parish of Terrebonne, Louisiana, was dated and entered on July 1, 1965. A timely petition for rehearing by Terrebonne Parish School Board, et al, Appellees, (R.196-208) was denied by order dated and entered on September 27, 1965, without written reasons (R. 209; App. C, *infra,* p. 72). A petition for writ of certiorari, timely filed, (R.1-39) was denied by the Supreme Court of Louisiana on November 23, 1965 (App. D, *infra,* p. 73). Justice Black on February 21, 1966, entered an order extending the time of Petitioners to file a petition for writ of certiorari in this Court to

and including April 7, 1966. (App. E, *infra*, p. 74). Jurisdiction is invoked under 28 U.S.C. 1257 (3)[1].

C.

QUESTION PRESENTED FOR REVIEW

This is an action for the cancellation of a mineral lease granted by the State Mineral Board to Union Oil Company of California and subsequently assigned to Respondent, Texaco, Inc., (formerly "The Texas Company") insofar as such lease affects or may affect any and all rights of Petitioners, the Terrebonne Parish School Board and its mineral lessees, Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara. *The area involved is Section 16, Township 21 South, Range 14 East, Parish of Terrebonne, Louisiana* (R. 40-53). On May 13, 1959, the State of Louisiana — although a TRUSTEE of school lands — and State Mineral Board intervened in these proceedings and adopted the position of Texaco (R. 69-74, 145, 182). The mineral lease held by Texaco which Petitioners assert is inapplicable to and null and void with respect to the subject sixteenth section excludes *"school and tax lands"* (R.181). If this sixteen section is held to be "school land", the lease held by Texaco is null and void with respect thereto because (a) Texaco's lease itself excludes *"school land"* and (b) Texaco derives its leasehold title from the State of Lou-

---

[1]"§ 1257. State Courts; appeal; certiorari

By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c.646, 62 Stat. 929."

isiana which in this case could not have granted, did not grant, and did not attempt to grant, a lease on "school land" to Texaco's predecessor in title.

Under L.S.A.-R.S. 30:152[2], local School Boards may grant oil, gas and mineral leases on "sections sixteen" and under a separate statute, L.S.A.-R.S. 30:124[3], the State Mineral Board has the authority to lease all other state owned lands. The Court of Appeal held that this sixteenth section contains areas comprising the beds of navigable waterways, and, accordingly, has maintained the validity of the lease from the Mineral Board as to such areas.

The basic federal question posed is whether the entire sixteenth section involved is "school land" within the intendment of the pertinent Acts of Congress notwithstanding that a part or parts thereof has been held to be the bed or beds of navigable waterways.

D.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States; Art. IV, Sec. 3, Cl. 2:

---

[2]"Every agency is authorized to lease its land for the development and production of minerals. School Boards are authorized to lease sixteenth section and school indemnity lands for the development and production of minerals."

[3]"The State Mineral Board has authority to lease for the development and production of minerals, oil, and gas, any lands belonging to the state, or the title to which is in the public, including road beds, water bottoms, and lands adjudicated to the state at tax sale."

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular state."

Act of Congress, April 21, 1806 (2 Stat. 391, Ch. 39, Sec. 11);

Act of Congress, March 3, 1811 (2 Stat. 662, 665, Ch. 46):

§ 10." . . . All such lands (public lands lying in the territory of Louisiana) shall, with the exception of the section 'number sixteen' which shall be reserved in each township for the support of schools within the same . . . be offered for sale to the highest bidder . . ."

§ 12. "That all navigable rivers and waters in the territories of Orleans and Louisiana shall and forever remain public highways." (Act of March 3, 1811).

Act of Congress, April 23, 1912 (37 Stat. 90, Ch. 88):

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That all the unsurveyed lands in the State of Louisiana which are shown by official protraction of the government surveys heretofore made to be

embraced within sections numbered sixteen and which lie in the same township as lands which have been certified or patented in that State under the Act approved March second, eighteen hundred and forty-nine, entitled 'An Act to aid the State of Louisiana in draining swamp lands therein', and the Act approved September twenty-eight, eighteen hundred and fifty, entitled 'An Act to enable the State of Arkansas and other States to reclaim swamp lands within their limits' to be, and the same are hereby, fixed, reserved, and confirmed to that State for the benefit of public schools as though the official surveys had been regularly extended over such townships.

Constitution of the State of Louisiana, Art. XII, Sec. 18:

"Section 18. Where Sixteenth Section or Indemnity Lands granted by Congress for public school purposes have been erroneously sold by the State, or paid by the State as fees for services rendered, such deficiencies shall be properly adjusted, as provided by the Constitution of 1879 and Section 19 of Article XII of the Constitution of 1921, and the amounts so determined shall be credited to the parish school boards of the parishes in which such townships are situated in proportion to the percentage of the townships lying in each said parishes and amounts so credited shall be treated as loans to the State on which the

State shall pay interest at the rate of four per cent (4%) per annum.

"The Parish school boards of parishes within which there lies a township or any portion of a township containing *a Sixteenth Section* or any portion of a Sixteenth Section shall be entitled to a portion of the proceeds derived from the sale of said Sixteenth Section or any portion thereof, including the sale of timber thereon and revenues arising from mineral leases, contracts, royalties and all other revenues arising from said sales, leases and contracts which may hereafter be consummated and said proceeds and revenues shall be credited to the parish school boards in which such townships are situated in proportion to the percentage of the townships lying in each parish and on the funds so credited to the respective parish school boards arising from the sources above mentioned, the State shall pay interest at the rate of four per cent (4%) per annum so long as said funds remain on deposit in the State Treasury."

L.S.A.-R.S. 30:152:

"Every agency is authorized to lease its land for the development and production of minerals. School Boards are authorized to lease sixteenth section and school indemnity lands for the development and production of minerals."

L.S.A.-R.S. 30:154:

> "C. In all cases where sixteenth section or school indemnity lands are leased, either by the State Mineral Board or the school board, all funds realized from these leases shall be paid to the school board of the parish where the lands are situated and credited to the current school fund of that parish, except that in the case of school indemnity lands, the lease shall be made by the State Mineral Board only and the funds credited to the parish school board entitled thereto. As amended Acts 1952, No. 353, § 1.

E.

HOW FEDERAL QUESTION WAS RAISED AND PASSED UPON

1. Petitioners' contention that under the appropriate Acts of Congress the sixteenth section involved herein is school land whether or not the said section contained a navigable waterway when Louisiana was admitted into the Union, or at any time thereafter, was raised initially in the District Court (R.41-43, 47, 155-156). The opinion of that Court reflects the objection Petitioners made to the admission of any evidence of navigability (R.155). The District Court ruled in favor of Petitioners on the interpretation of Louisiana statutes enacted pursuant to the donation by Congress but without reference to the specific federal issue asserted.

2. Petitioners' contention was asserted on appeal to the Court of Appeal, First Circuit (R.183). The Court considered, discussed and decided that under the Congressional Acts, Louisiana did not acquire title to this sixteenth section until the enactment of Louisiana Protraction Statute in 1912, and, therefore, title to water bottoms had already passed to the State, free of the aforesaid trust, upon its admission into the Union.

3. Petitioners' contention was reasserted on rehearing (R.201) and on petition for writ of certiorari, particularly in Assignment of Errors No. 1 that "The Court of Appeal erred in holding that the entry of Louisiana into the Union vested it with title to the 'bottoms of navigable waterways' within sixteenth sections" (R.8).

F.

STATEMENT OF CASE

Terrebonne Parish School Board began granting mineral leases on the sixteenth section specifically involved herein in 1927 (Petitioners' Exhibit P.11) and has exercised jurisdiction over the entire section to the present time (Petitioners' Note of Evidence P.1-P.35).

On March 25, 1946, Union Oil Company of California acquired "State Lease No. 725" covering a large area known as "Tract 586", the description of which specifically excluded therefrom *"school and tax lands."* (R.181). On January 6, 1948, Terrebonne Parish School Board granted a mineral lease to Union Oil

Company of California covering *Section 16, Township 21 South, Range 14 East* (Petitioners' Exhibit P.3). This lease was approved by the Mineral Board and the Attorney General's office as to form and legality. Union Oil, the original Defendant herein, subsequently released said section sixteen back to the School Board on January 31, 1950 (R.182).

On January 10, 1953, Terrebonne Parish School Board then granted the mineral lease on the sixteenth section pursuant to the State Agency Leasing Act (L.S.A.-R.S. 30:151 et seq.) to Robert B. Prentice and M. H. Marr, which lease was subsequently acquired in full ownership by mesne conveyances by Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara. The lease from the School Board was approved on January 14, 1953, by the Mineral Board and by the Attorney General's office as to *form* and *legality* (Petitioners' Exhibit P.1), and in due course the School Board's lessees drilled a well on January 24, 1954, which was placed on production after institution of the instant action. It has been conceded that the well was drilled on the landed area, and, further, Texaco has disclaimed any ownership, possession or any leasehold right, title or interest to the landed area within *Section 16, Township 21 South, Range 14 East.* The State and the State Mineral Board furthermore have acknowledged the right of School Boards to lease landed areas within sixteenth sections under the Acts of Congress and laws of Louisiana enacted pursuant thereto (R.184, 193).

On May 15, 1961, on proper showing that the Union Oil Company of California, a co-defendant herein, as co-proprietor with Texaco, had assigned and trans-

ferred to Texaco, all of its rights in and to the lease in question dated March 25, 1946, and that the Union Oil Company of California had no further interest in the matter, Texaco was substituted by order of court as the sole Defendant herein (R.146, 153).

Texaco, the State of Louisiana and the State Mineral Board contend that the section sixteen herein was the bed of a navigable waterway in 1812 when Louisiana became a state, or that since that time the section has become navigable, and, therefore, the title rests in the State of Louisiana in its proprietary capacity by virtue of its inherent sovereignty and only the State Mineral Board may lease water bottoms therein. The School Board and its lessees, on the contrary, asserted: (1) The Louisiana Legislature granted School Boards full authority over sixteenth sections regardless of the physical characteristics of said sections; and, (2) sixteenth sections were dedicated by the United States and reserved for public schools as a sacred trust prior to Louisiana's statehood. Louisiana became a state subject to, and charged with, this prior trust and, as a consequence, while legal title to this *sixteenth section* is in the State of Louisiana, by virtue of the Acts of Congress of April 21, 1806 (2 Stat. 391, Ch. 39), March 3, 1811 (2 Stat. 662, 665, Ch. 46, Sec. 10) and the Louisiana Protraction Statute of April 23, 1912 (37 Stat. 90, Ch. 88), such title is held in trust for the benefit of the public schools, as has been recognized and acknowledged by State laws. PETITIONERS MAINTAIN THAT IT IS IMMATERIAL WHETHER OR NOT THIS SIXTEENTH SECTION WAS THE BED OF A NAVIGABLE WATERWAY IN 1812 OR THEREAFTER (R. 183).

Over the objection of Petitioners, evidence was offered by Texaco and adopted by the State of Louisiana and Mineral Board, for the purpose of establishing navigability in 1812 as a predicate for establishing title in the State unburdened by the prior reservation by Congress of sections number "sixteen" for school purposes.

The District Court, after a trial on the merits, assigned written reasons maintaining Petitioners' contention that it is immaterial whether or not water bottoms are located within the sixteenth section (R. 158). The Court of Appeal reversed relying on *Pollard* v. *Hagan,* 3 Howard 212, and holding that Louisiana acquired title by virtue of sovereignty upon its admission into the Union in 1812, free of the aforesaid trust in that it was "after the Act of 1912 (Protraction Act of 1912, 37 Stat. 90) swamp lands in 16 sections were reserved to the State" (R.191) and the Supreme Court of Louisiana subsequently refused to grant a review of that holding (App. D, *infra*, p. 73).

G.

REASONS FOR ALLOWANCE OF WRIT

This action is one of first impression and squarely presents a public question of vital importance to the school children of each township in Louisiana now and for unborn generations. It is not a contest between private litigants, but, in effect, between the State and one of its parish school boards. No governmental problem is involved because only the utilization of the income from the school lands is affected herein. The decision below does violence to

traditional federal and state law. It deprives the public schools of the benefits of valuable rights.

Under Louisiana law, as stated in *State of Louisiana* v. *Humble Oil & Refining Co.*, 195 La. 457, 197 So. 140 (1940), *"sixteenth sections have been continuously recognized as school lands. . ."* For the instant Louisiana decision to exclude beds of navigable waterways from the ruling in *Humble* is untenable because both Louisiana and federal statutory law recognize the beds of navigable waterways to be "land."

The apparent policy of the State is to appropriate exclusively unto itself for general state purposes the mineral revenue from all sixteenth sections if such sections are covered by waterways notwithstanding that L.S.A.-R.S. 30:154[4] and Article XII, Sec. 18 of the Constitution of Louisiana[5] specifically direct that all

[4]"C. In all cases where sixteenth section or school indemnity lands are leased, either by the State Mineral Board or the School Board, all funds realized from these leases shall be paid to the school board of the parish where the lands are situated and credited to the current school fund of that parish, except that in the case of school indemnity lands, the lease shall be made by the State Mineral Board only and the funds credited to the parish school board entitled thereto. As amended Acts 1952, No. 353, § 1."

[5]"The parish school boards of parishes within which there lies a township or any portion of a township containing a Sixteenth Section or any portion of a Sixteenth Section shall be entitled to a portion of the proceeds derived from the sale of said Sixteenth Section or any portions thereof, including the sale of timber thereon and revenues arising from mineral leases, contracts, royalties and all other revenues arising from said sales, leases and contracts which may hereafter be consummated and said proceeds and revenues shall be credited to the parish school boards in which such townships are situated in proportion to the percentage of the townships lying in each parish and on the funds so credited to the respective parish school boards arising from the sources above mentioned, the State shall pay interest at the rate of four per cent (4%) per annum so long as said funds remain on deposit in the State Treasury."

proceeds derived from sixteenth sections be credited to the local school boards. The basic issue involved is of the greatest magnitude. Fundamental rights have been denied. The School Board is entitled to the revenues derived from the section under any and all circumstances.

As of April 30, 1812, when Louisiana became a State, this section "sixteen" was (a) "dry" land, or (b) "swamp" or "overflowed" land, or (c) the bed of a navigable waterway. Petitioners' position is that whatever the physical character of section sixteen may have been in 1812, 1912, or may be at the present time, is immaterial because in any event this section sixteen is "school land", the legal title to which is in the State of Louisiana pursuant to the Acts of Congress, solely as Trustee for the public schools [Art. III, Treaty of Cession, April 30, 1803, 8 Stat. 202; Act of Congress, April 21, 1806, 2 Stat. 391, Ch. 39; Act of Congress March 3, 1811, 2 Stat. 662, 665, Ch. 46, Sec. 10; Act of Congress, February 20, 1811, 2 Stat. 641, Ch. 21; Act of Congress, April 8, 1812, 2 Stat. 701, Ch. 50; Act of Congress, April 14, 1812, 2 Stat. 708, Ch. 57; Act of Congress, April 23, 1912, 37 Stat. 90, Ch. 88] and is not owned or held by the State of Louisiana in a proprietary capacity. *State* v. *Humble,* 197 So. 140; *State of Louisiana* v. *Joyce,* 261 F. 128, cert. denied 253 U.S. 484.

1. *Legislative Intent*

On November 3, 1762, Louis XV ceded by the secret Treaty of Fontainebleau to the King of Spain the entire province of Louisiana (13 Cong. Deb., 24th Cong. 2d Sess. pt. 11, App. 226). Spain, subsequently on Oc-

tober 1, 1800 transferred the territory to France by the Treaty of St. Ildefonso, to be delivered on October 15, 1802, (id., at 229). The United States acquired the territory from France by the Treaty of Cession on April 30, 1803, and on that date title to the entire Louisiana Territory so purchased vested exclusively in the United States (8 Stat. 200, 202).

The intent of Congress and the Legislature of Louisiana in setting aside sixteenth sections for school purposes clearly evidences that these sections were to be used for the benefit and support of the schools in the townships within which the sections are located. The first legislative enactment reserving and setting aside the sixteenth section of every township for the public schools was the Ordinance adopted by the Continental Congress in 1785 (1 Stat. 563). This Ordinance contained the provision that:

> "There shall be reserved the Lot 16 of every Township for the maintenance of public schools within the said Township." (Ch. 32)

The Constitution of the United States was adopted in 1789, and by reason of Article IV, Sec. 3, Clause 2, Congress alone had the ultimate authority to determine under what terms and conditions property of the Federal Government may or shall be granted, sold or disposed of in any way. This proviso affecting all public lands stipulates:

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the territory or other Property belonging to the United States; and noth-

ing in this Constitution shall be so construed as to prejudice any Claims of the United States, or of any particular State."

In *Gibson* vs. *Chouteau,* 13 Wall 92 (1872) which involved a complex issue of a claim of title under State law as against title claimed through a patent from the Federal Government, the Court said:

> "With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarass its exercise; and to prevent the possibility of any attempted interference with it, a provision has been usually inserted in the compacts by which new States have been admitted into the Union, that such interference with the primary disposal of the soil of the United States shall never be made."

The rule enunciated in *Gibson vs. Chouteau* had earlier been announced in *Bagnell* vs. *Broderick,* 13 Pet. 436, 450 (1839), wherein the Court stated that only Congress had "the sole power to declare the dignity and effect of titles emanating from the United States." In *Wilcox* vs. *Jackson,* 13 Pet. 498 (1839), the Court held that the question of whether title to land

which was once the property of the United States had passed is to be resolved by federal law.

By the Acts of Congress of April 21, 1806 (2 Stat. 391, Ch. 39, Sec. 11) and March 3, 1811 (2 Stat. 662, 665, Ch. 46, Sec. 10), the President of the United States was authorized to sell certain lands in the Territory of Orleans (now the State of Louisiana) "with the exception of the section 'number sixteen' ", which was "reserved in each township for the support of the schools within the same."

The Acts of the Congress of the United States of April 21, 1806, (2 Stat. 391, Ch. 39, Sec. 11) and March 3, 1811 (2 Stat. 662, 665, Ch. 46, Sec. 10) entitled, "An act providing for the final adjustment of claims to lands, and for the sale of the public lands in the territories of Orleans and Louisiana" provide:

> ". . . All such lands (public lands lying in the territory of Louisiana) shall, with the exception of the section 'number sixteen' which shall be reserved in each township for the support of schools within the same . . . be offered for sale to the highest bidder. . ."

The wording of these Acts which were enacted in anticipation of Louisiana's entry into the Union shows clearly that every section "number sixteen" was reserved, and Petitioners assert that such wording obviously included all property situated within the boundaries of such section.

Section 12 of the Act contains the first mention of navigable waters by providing:

> "And be it further enacted, That all the navigable rivers and waters in the territories of Orleans and Louisiana shall be and forever remain public highways."

In an Act entitled "An Act to enable the people of the Territory of Orleans to form a Constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes," enacted February 20, 1811, 2 Stat. 641, Ch. 21, Congress provided in Section 3 thereof:

> "And that the river Mississippi and the navigable rivers and waters leading into the same or into the Gulf of Mexico, shall be common highways and for ever free as well as to the inhabitants of the said state as to the other citizens of the United States, without any tax, duty, impost or toll therefor, imposed by the said state."

From the above Acts it is perfectly clear that navigable rivers and waters in Louisiana shall forever remain "public highways (Act of March 3, 1811) and "common highways" (Act of February 20, 1811). It is patent too, that the ownership of the beds of navigable waters lying within sixteenth sections were not excluded from the prior reservations for school purposes but, instead servitudes for public highways (navigable streams) were created on and over said lands (beds of navigable waterways) so that revenues derived from the beds and bottoms of these streams were to enure to the benefit of the school children of Louisiana. An analogous situation is found with regard

to highways and levees built by the State or Federal government over privately owned land. It has repeatedly been held that production from lands over which such a servitude exists is vested in the owner of said lands and not in the governmental body possessing the servitude on producing land. Congress reserved ALL sections numbered sixteen for school purposes knowing full well at the time that the geography of Louisiana which was then being accorded the privilege of statehood was such that sections numbered sixteen of necessity would be traversed by navigable waterways. It is a simple immutable fact that Louisiana had not been surveyed. The survey of public lands was authorized by Congress in 1796 and the first Act of Congress reserving sections sixteen was enacted in 1806. The interests of the public generally were protected in both the Acts creating the reservations and in the Act authorizing Louisiana's entry into the Union by making such navigable waterways "public highways" and "common highways" forever. The conclusion is inescapable that the imposition of an easement or servitude on such waterways was not intended and could never have been intended to minimize the donation by Congress of the entirety of sections numbered sixteen to the State to be formed (Louisiana) to be held by Louisiana in trust for public school purposes.

Louisiana was the first state formed out of the Louisiana Purchase and was admitted into the Union by virtue of the Acts of February 20, 1811 (2 Stat. 641, Ch. 21); April 8, 1812 (2 Stat. 701, Ch. 50); and April 14, 1812 (2 Stat. 708. Ch. 57). Under the Acts of Congress enacted prior to 1812, which reserved ALL SECTIONS NUMBERED SIXTEEN FOR SCHOOL PURPOSES, the legal title to all such "sixteenth sec-

tions'' remained in the United States until the sections were surveyed in place by the rectangular system of survey. Act of Congress, May 18, 1796, (1 Stat. 464, Ch. 29). *State of Louisiana vs. Joyce,* 261 F. 128 (1919) cert. denied, 253 U.S. 484. In short, Louisiana entered the Union with *all* ''sixteenth sections'' excluded. In *Meyer vs. State,* 168 La. 146, 121 So. 604 (1929) the Court unequivocally held:

> '' 'Until the status of the lands was fixed by a survey and they were capable of identification, Congress reserved absolute power over them, and if, in exercising it, the whole or any part of a sixteenth or thirty-sixth section had been disposed of, the state was to be compensated by other lands equal in quantity, and as near as may be in quality.' *Heydenfeldt v. Daney Gold & S. Min. Co.,* 93 U.S. 634, 23 L.Ed. 995; *United States v. Morrison,* 240 U.S. 192, 36 S. Ct. 326, 60 L.Ed. 599.''
>
> * * * *
>
> ''It follows necessarily that the State of Louisiana took title to the property in dispute after the approval of the official survey of October 20, 1873.''

In 1912, or one hundred years after Louisiana's entry into the Union, many sixteenth sections — before the advent of the modern petroleum industry — had not been officially surveyed in place. Therefore, the Congress of the United States enacted the Louisiana Protraction Act on April 23, 1912, 37 Stat. 90, which Act declares:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That all the unsurveyed lands in the State of Louisiana which are shown by official protraction of the government surveys heretofore made to be embraced within sections numbered sixteen and which lie in the same township as lands which have been certified or patented in that State under the Act approved March second, eighteen hundred and forty-nine, entitled 'An Act to aid the State of Louisiana in draining swamp lands therein', and the Act approved September twenty-eight, eighteen hundred and fifty, entitled 'An Act to enable the State of Arkansas and other states to reclaim swamp lands within their limits' to be, and the same are hereby, fixed, reserved, and confirmed to that State for the benefit of public schools as though the official surveys had been regularly extended over such townships."

The express language of the Act recognizes the original reservation of sixteenth sections for school purposes as of a time prior to Louisiana's entry into the Union and confirmed to the State for the benefit of the public schools the unsurveyed lands shown by official protraction of government surveys to be embraced within sections sixteen lying in the same township as lands certified or patented to the State under the Swamp Land Grants. If the Protraction Act had not been enacted the legal title to "school lands", not protected by an official survey in place, would still be in the United States.

The first official map of Terrebonne Parish was made by Rightor and McCollam in 1838, under contract of January 10, 1837, and was approved by the Surveyor General of Louisiana on December 8, 1842 (Petitioners' Exhibit P.36). The Protraction Act fixed this sixteenth section in Township 21 South, Range 14 East in place for school purposes even though it had not been surveyed by "the rectangular system of surveying" under the Act of May 18, 1796 (1 Stat. 464, Ch. 29, now 43 U.S.C. 751).[6] The reservation of sections number sixteen prior to Louisiana's entry into the Union is clear and unequivocal. The United States owned the section in Terrebonne Parish at the time of its reservation for school purposes and continued to own it until the enactment of the Act of 1912. The State *may not* claim the benefits of the Act and at the same time deny its effect as to this section.

The School Indemnity Lands Act of February 26, 1859, 11 Stat. 385, (now 43 U.S.C. 891) relied upon by Respondents, (while irrelevant herein because the section involved is in this case by protraction an *entire* section in place by rectangular survey) actually supports Petitioners' contention. The Act allowed the State to select other federal lands when title

---

[6] In *United States* v. *Wyoming*, 331 U.S. 440 (1947), the Court cited *United States v. Morrison*, 240 U.S. 190 (1916) and held that a completed but unapproved survey was inadequate to vest any rights to school lands. These decisions are inapplicable to this section sixteen because of the expressed provisions of the Act of 1912. The District Court held and it is indisputable that ". . . all 16th sections were finally, by the Congressional Act of 1912, whether surveyed in place or protracted, vested in the State of Louisiana for school purposes." (R. 157) Accordingly, whatever the law may be in other states with respect to sections sixteen is no concern herein because the status of sixteenth sections in Louisiana is peculiarly unique and exclusive for all purposes.

could not vest because of prior sale, settlement, or if the section had not been surveyed in place. The state had the right to select additional land *if a section sixteen did not contain 640 acres.* The Indemnity Lands Act guaranteed the state 640 acres for school purposes within each township. The critical fact here is that there has never been a disposition of this section nor has any claim been filed for indemnity land. Consequently the Louisiana Protraction Act confirmed the original reservation, operated and vested title retroactively according to its terms, and in doing so recognized and confirmed the Rightor and McCollam Official Survey of Terrebonne Parish, and dispensed with the need for an actual ground survey. If title to part of section sixteen vested upon the admission of the State of Louisiana in 1812 by virtue of inherent sovereignty, why did Louisiana select this entire section in Terrebonne Parish under the Swamp Land Grant of March 2, 1849 (9 Stat. 352) and Septemper 28, 1850, id. 516 (Petitioners' Exhibit P.38)? Louisiana's selection is a demonstration that it did not own the area. It is an admission that title was still in the Federal Government. The selection, however, was rejected by the Land Department on October 14, 1852 "on account of the land therein embraced having been reserved for school purposes prior to the passage of said Act of 2 March, 1849" (Petitioners' Exhibit P.38, P.40, P.41 P.42), and hence could not pass under the Swamp Land Grants (Petitioners' Exhibit P.39). The State of Louisiana never appealed. It simply cannot annul or avoid its effect in this proceeding.

The plain fact is that from the moment the United States acquired the Louisiana Territory from

France in 1803, the legal title thereto, including the beds of all navigable waterways within the Louisiana Territory, was vested exclusively in the United States, and, thereafter by reason of Article 4, Section 3, Clause 2 of the Constitution of the United States, Congress possessed the full power of disposition thereof which was subject to no limitations whatsoever. As stated in *Gibson vs. Chouteau,* 13 Wall. 92 (1872), Congress had the absolute right to prescribe the times, the conditions, and the mode of transferring the public domain or any part of it, and to designate the person to whom the transfer should be made. *Gibson* held that no state legislature could interfere with the absolute right of Congress with respect to the primary disposal of the soil of the United States or embarrass its exercise. We recognize the general rule stated in *Pollard v. Hagan,* 3 Howard 212, cited by the Court of Appeal, but, it is submitted, sixteenth sections which were not before the Court in *Pollard* are an exception to that general rule.

The Court's holding that Louisiana acquired part of this area in this sixteenth section in 1812 by virtue of inherent sovereignty because Louisiana was entitled to come and did come into the Union on an equal footing with the other states is totally without merit. The identical question was posed with respect to the Submerged Lands Act "Public Law 31" in *State of Alabama, et al vs. State of Texas,* et al, 347 U.S. 272 (1953) rehearing denied (1954). The State of Alabama therein attacked the validity of the Submerged Lands Act specifically on the ground that it violated the clause that granted equal rights to the states upon their admission to the Union. The Court maintained the constitutionality of the Submerged Lands Act and held that the Act is a

valid exercise of the power granted to Congress under Article IV, Section 3, Clause 2, of the Constitution. In so doing, the Court said: "The power of Congress to dispose of any kind of property belonging to the United States is vested in Congress without limitation", (citing United States vs. Midwest Oil Company, 236 U.S. 459, 474, 59 L. Ed. 673, 681, 35 S. Ct. 309 (1915), and that "Congress not only has a legislative power over the public domain, but it also exercises the powers of the proprietor therein", and "may deal with such lands precisely as a private individual may deal wth his farming property." Mr. Justice Reed, in concurring, stated:

> "The fact that Alabama and the defendant states were admitted into the Union 'upon the same footing with the original states, in all respects, whatever, (2 Stat. 701, 3 Stat. 489, 5 Stat. 742, 797, 9 Stat. 452), does not affect Congress' power to dispose of federal property. The requirement of equal footing does not demand that courts wipe out diversities 'in the economic aspects of the several States,' but calls for 'parity as respects political standing and sovereignty'. *United States v. Texas,* supra. (339 U.S. at 716). The power of Congress to cede property to one state without corresponding cession to all states has been consistently recognized. See e. g., *United States v. Wyoming,* 335 U.S. 895, 93 L. Ed. 431, 69 S. Ct. 297, and cases cited by the Court."
>
> "The United States holds resources and territory in trust for its citizens in one sense, but not in the sense that a private trustee holds for a cestui que trust. The responsibility of Congress is to utilize the assets that come into

its hands as sovereign in the way that it decides is best for the future of the Nation . . ."

(See also *United States vs. Louisiana*, 363 U.S. 1, 4 L.Ed. 2d 1025 at p. 1072, 80 S. Ct. 961, 1960).

The Submerged Lands Act is an outstanding illustration of the recognition by Congress that lands lying beneath navigable waterways are LAND, and it is for Congress to determine, under the Constitution, the disposition of lands of the United States.

In *United States vs. Holt State Bank*, 270 U.S. 49, the Court said:

"It is settled law in this country that lands underlying navigable waters within a state belong to the state in its sovereign capacity and may be used and disposed of as it may elect, subject to the paramount power of Congress to control such waters for the purpose of navigation in commerce among the states and with foreign nations, and subject to the qualification that where the United States, after acquiring the territory and before the creation of the state, has granted rights in such lands by way of performing international obligations, or effecting the use or improvement of the lands for the purposes of commerce among the states and with foreign nations, or *carrying out other public purposes appropriate to the objects for which the territory was held, such rights are not cut off by the subsequent creation of the state, but remain unimpaired, and the rights which otherwise would pass to the state in*

> *virtue of its admission into the Union are restricted or qualified accordingly* (Numerous cases cited.) But . . . the United States early adopted and constantly has adhered to the policy of regarding lands under navigable waters in acquired territory, while under its sole dominion, as held for the ultimate benefit of future states, and so has refrained from making any disposal thereof, *save in exceptional instances when impelled to particular disposals by some international duty or public exigency.*"

Sections were reserved. In reserving sections numbered sixteen in Louisiana for school purposes, Congress provided for a public school system which was a *carrying out of a public purpose appropriate to the objects for which the territory was held* and the public school system so created was the kind of *"public exigency"* referred to in *Holt*. The Act of 1811 clearly represented a continuity of national policy delineated in Article III of the Northwest Ordinance of 1787, which provided that *"Religion, morality and knowledge being necessary to good Government and the happiness of mankind, schools and means of education shall forever be encouraged"*. *Holt* is the strongest authority for the proposition that Congress always had, under the Constitution, the absolute power of disposition PRIOR to the creation of the future states.

2. *Doctrine of Inherent Sovereignty is not applicable to Section Sixteen*

Sovereignty commences at the moment of creation of a political entity and in its largest sense means ab-

solute unrestricted and uncontrolled political authority. The courts have held that state governments are completely "sovereign" within their territory, except, however, as they are subject to prohibitions of the Constitution or as their action in some measure conflicts with powers delegated to the Federal Government or with congressional legislation enacted in the exercise of those powers. The phrase "inherent sovereignty," therefore, when applied to a state of the Union can mean one thing alone, and that is the absolute political power emanating from the *creation* of a state and the governmental power flowing directly therefrom, subject to the restrictions placed on it by its creator. Consequently, the "inherent sovereignty" of Louisiana began at the instant of its entry into the Union but was subject to the restriction decreed by its creator, the United States of America, that "sections number sixteen" shall be reserved, dedicated and set aside for school purposes. Inherent sovereignty did not affect the dedication of sixteenth sections. Nor may be it used to circumvent and nullify rights given to the school boards in each Township where a section sixteen is located.

"Inherent sovereignty" must be held to mean the attributes of sovereignty itself and those attributes grow out of the creation of sovereignty which in the case of Louisiana was the moment Louisiana became a state. Prior to that moment of statehood, Louisiana simply did not exist and, therefore, "inherent sovereignty" was also non-existent. Louisiana become a trustee with respect to all surveyed sections number sixteen in compliance with the Acts of Congress and all unsurveyed sections number sixteen as

shown by official protraction of a government survey upon the approval of the Protraction Act on April 23, 1912. The trusteeship of Louisiana was recognized in *State of Louisiana v. Humble,* 197 So. 140. The Supreme Court of Louisiana held:

> "The framers of the various State Constitutions have clearly recognized the State's moral obligation and have embodied in the various constitutions provisions dealing with sixteenth sections, expressly dedicating the revenues from those sections to public education. At a number of sessions of the legislature, statutes have been enacted providing for the sale, leasing and operation of the sixteenth sections. From the first constitutional or legislative pronouncement up to and including the legislative session of 1934, sixteenth sections have been continuously recognized as school lands, and as such, separate and distinct from other kinds of public lands."
>
> * * * *
>
> "As we have hereinabove observed, the sixteenth section lands have been set apart as school lands and have been dealt with as such for many years. They have been excluded ex industria from all legislation covering or relating to public lands. Their status as school lands was not affected by any previous legislative act dealing with the leasing of public lands for mineral purposes. Prior to the institution of this suit, the right of a school board

to control and administer, for the benefit of the public schools, the sixteenth section lands situated in its parish was never questioned. In fact, subsequent to the adoption of Act 30 of 1915, authorizing the leasing for mineral purposes, of any lands belonging to the State, the Legislature adopted Act 100 of 1922 specifically authorizing the school boards of the various parishes to lease for mineral development the sixteenth section lands situated in their parishes, the funds realized therefrom to be credited to the current school funds of the parishes.

"The language used in Act 93 of 1936 to describe the lands covered by its provisions is both general and particular. After providing generally in Section 4(R.S. 30:124) that the Mineral Board was vested with authority to lease 'any lands belonging to the State or the title to which is in the public,' the statute proceeds to designate the kind of lands that are included in the general description, viz., 'rights of way, road-beds, lake and river beds and other bottoms, lands adjudicated to the State at tax sale, and any other lands and water bottoms by whatever title acquired.' It will thus appear that the legislature was excessively careful to describe certain kinds of lands that were included in the grant to the State Mineral Board. *If it were the intention of the legislature that sixteenth section lands, which were under the jurisdiction of the school authorities, should be amenable to the provisions of the*

act, it would have been a simple matter for the legislature to also mention those lands in the statutory provisions. The legislature did not do this. No mention of the sixteenth section lands is made anywhere in the legislative act. The omission is significant and cannot lead the earnest inquirer to any other conclusion than that the omission was intentional and that it was never within the contemplation of the legislature to divest the school boards of their control and administration of the sixteenth section lands."

In sum, the State of Louisiana holds title to section sixteen located in *Township 21 South, Range 14 East, Terrebonne Parish, Louisiana,* in trust for the public schools of Terrebonne Parish and not in a proprietary capacity both under the Acts of Congress of April 21, 1806, March 3, 1811 and April 23, 1912 and under the *Humble* decision. The fact that part of this section sixteen has been held to contain the bed or beds of navigable waterways is immaterial in this litigation. The decision below must not serve as a precedent to deny School Boards revenues dedicated to public education in Louisiana in direct circumvention of the Acts of Congress cited.

H.

CONCLUSION

For the reasons stated, this petition for certiorari should be granted.

Respectfully submitted,

LLOYD J. COBB
METTERY I. SHERRY, JR.
COBB & WRIGHT
902 Whitney Building
New Orleans, Louisiana
Counsel of Record for
Petitioners

WILMORE J. BROUSSARD, JR.
Houma, Louisiana

HERBERT W. CHRISTENBERRY, JR.
New Orleans, Louisiana
Of Counsel

I.

CERTIFICATE OF SERVICE

I, LLOYD J. COBB, hereby certify that a copy of the foregoing Petition For Writ of Certiorari, was served upon Counsel of Record in the Court below, representing Respondent, Texaco, Inc., and representing Respondents, the State of Louisiana and the State Mineral Board, by enclosing each such copy in envelopes, duly addressed to each such Counsel of Record at his post office address, with the required air mail first class postage prepaid and affixed thereto, and depositing same in the United States Post Office at New Orleans, La., on this _____ day of March, 1966.

LLOYD J. COBB
Counsel of Record for
Petitioners

APPENDIX "A"

OPINION AND JUDGMENT OF THE DISTRICT COURT

State of Louisiana 17th Judicial District Court
Parish of Terrebonne

Terrebonne Parish School Board, for the use and benefit of the Public Schools of Terrebonne Parish, Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara

versus No. 19,075

Texaco Inc.

REASONS FOR JUDGMENT

This suit was originally filed by the State of Louisiana, through the Terrebonne Parish School Board, Robert D. Sterling, of New York, Ruth L. Sterling of New York, and Robert W. O'Meara of the State of Illinois against the Union Oil Company of California and the Texas Company.

By subsequent stipulation, the title of the suit was changed to that appearing above.

The Union Oil Company of California and the Texas Company filed answer, and subsequently, the State of Louisiana, which had been deleted as plaintiff by the aforesaid stipulation, and the State Mineral Board intervened in the suit on the side of defendants. The prayer of the State of Louisiana and the Mineral Board

in their petition of intervention is identical with that of the defendants. Hereinafter, for purposes of brevity, defendant and intervenors will be referred to simply as defendants.

Subsequently, on showing of an assignment by the Union Oil Company of California to Texaco, Inc. (to which the Texas Company had changed its name) Texaco, Inc. was substituted as the sole defendant in the case.

Plaintiff's petition sought to have declared null and void a lease granted by the Louisiana State Mineral Board to the Union Oil Company of California dated March 25, 1946, insofar as it was in conflict with the rights of plaintiffs as lessees of the Terrebonne Parish School Board under a lease approved by the State Mineral Board on January 10, 1953, covering Section 16, T 21 S, R 14 E. The petition prayed also that the Union Oil Company of California lease be cancelled insofar as it affects, or may affect, the aforesaid Section 16, and that the defendant be permanently enjoined from asserting any claim whatsoever to said Section 16 under the aforesaid lease from the State Mineral Board dated March 25, 1946, to the Union Oil Company of California.

Defendant's answer, as well as the intervention by the State of Louisiana and the Louisiana State Mineral Board, prays that all of the claims and demands of plaintiffs be denied, and further prays for judgment decreeing that title to that part of the beds and bottoms of Mud Hole Bay and Mud Hole Bayou included in the property leased by the State Mineral Board to the Union Oil Company of California is owned and held

by the State of Louisiana, not for the benefit of schools but by virtue of its sovereignty and in a proprietary right. Defendant and intervenors likewise pray for judgment decreeing that plaintiffs have no right, title or interest in and to the beds of said waters, and that no part thereof is subject to the mineral lease granted by the Terrebonne Parish School Board in favor of Robert B. Prentice and M. H. Marr, dated January 10, 1953, and that the portion of the beds of said waters lying within the outlines of the tract leased by the State Mineral Board to the Union Oil Company of California is subject to said lease by the Union Oil Company of California, and now Texaco, Inc.

The crucial issues presented by the substantive pleadings in this case are the following:

1. May a Louisiana School Board, in this case, the Terrebonne Parish School Board, under the law of Louisiana, grant a mineral lease on 16th section lands including the beds and bottoms of water bodies situated in such section? or

2. Does the State of Louisiana, through the State Mineral Board, have the exclusive right to grant mineral leases covering water bottoms even though said water bottoms are located and situated in 16th sections?

Much of the trial of this case was devoted to testimony and evidence offered by defendants to show that Mud Hole Bay and Mud Hole Bayou, the bodies of water involved herein, were navigable bodies of water, in order to support defendants' position that under the law of Louisiana, the leasing of the beds of such navig-

able waters was reserved exclusively to the State of Louisiana through the Mineral Board.

It should be noted that prior to the presentation of such evidence of navigability, plaintiffs objected on the following grounds:

"1. Section 16, Township 21 South, Range 14 East is admitted herein to be a section numbered 16 by rectangular survey by virtue of the protraction statute of April 23, 1912, the said section at a time when the title thereto was in the United States of America was expressly reserved and dedicated by the United States for public school purposes under and by virtue of the Act of Congress of April 21, 1806 — Two statutes, 391, chapter 239 — the Act of Congress March 3, 1811 664, chapter 46, section 10. Louisiana became a state on April 30, 1812, and on that date the naked title of the said 16th section subject to the said existing trust vested in the State of Louisiana. Louisiana has always had a title to said 16th section as a trustee for the public schools rather than in a proprietary capacity. The dedication of the said 16th section prior to Louisiana's entry into the United States affected and included the entire section 640 acres without any limitation as to the nature or character of the said 640 acres so dedicated and whether or not said 16th section constituted the bed of a navigable waterway on April 30, 1812 or at any time thereafter is irrelevant and immaterial herein in that the alleged navigability at that time could not conceivably affect the prior reservation and trust which is binding for all purposes on the State of Louisiana as trustee pursuant to the aforedescribed statutes of the United States.

2. The State of Louisiana duly selected the section numbered 16 involved herein as swamp land and by virtue of swamp land acts of 1849, and as shown by Item "P-38" in plaintiffs' note of evidence and stipulation 23 the Commissioner, General Land Office on October 14, 1852, rejected said selection "on account of the land therein embraced having been reserved by law for school purposes prior to the passage of said act of 2 March, 1859", all as shown by Item "P-40" in plaintiffs' note of evidence and Item 25 of the stipulation. The State of Louisiana has not appealed from said decision since the rendition thereof approximately 110 years ago, and the said decision as between the State of Louisiana and the United States of America was and is in effect a final judgment that the character of the land involved was and is swamp land and is res judicata as between the State of Louisiana and the United States of America, and both the State of Louisiana and its lessee, Texaco, Inc., a defendant herein are estopped to assert that Section 16, Township 21 South, Range 14 East in dispute herein or any part thereof is the bed of a navigable waterway and evidence to prove navigability is inadmissible." (Tr. pp. 3, 4)

Briefs furnished by counsel for all parties reflect exhaustive research for which the Court is grateful.

There seems to be no dispute that title to the 16th section land herein involved, as well as other 16th section lands, lies in the State of Louisiana.

Likewise, there seems to be no dispute that such 16th section lands were granted to the State to be held in trust for school purposes.

It has been shown that the Act of Congress of April 21, 1806, C. 39, 2 Stat. 391, and the Act of Congress of March 3, 1811, C. 46, 2 Stat., 662, were the acts by which such grants were originally made.

Defendants' position is that under those congressional acts only such lands "as were surveyed in place" vested in the State of Louisiana for school purposes. Defendants also argue that the 16th section herein involved was not surveyed in place but is a protracted section never actually surveyed and located in place, and did not vest in the State of Louisiana for school purposes under the aforesaid Acts of Congress of 1806 and 1811.

It is pointed out, however, that the Act of Congress of April 23, 1912 (37 Stat. 90) vested in the State of Louisiana for school purposes title to all unsurveyed lands embraced in 16th sections which were protracted from existing government surveys.

It must follow, therefore, that, from the general language of the statutes, all 16th sections were finally, by the congressional Act of 1912, whether surveyed in place or protracted, vested in the State of Louisiana for school purposes.

Defendants further argue, however, that the beds of navigable streams or bodies of water situated in said 16th sections, although vested in the State by a kind of retroactive inherent sovereignty, were not burdened with the trust for school purposes as were the high land or up land portions of said 16th sections. Therefore, defendants contend, the plaintiff school

board had no right to include in its lease to the other plaintiffs Mud Hole Bay and Mud Hole Bayou, which defendants allege are, and were navigable both in 1812, when Louisiana achieved statehood, and in 1912, when the "protracted" section 16 was vested in the State of Louisiana for school purposes.

It would be well at this point to set out the authority under which plaintiff school board purported to act in executing the mineral lease in question in favor of the other named plaintiffs. Louisiana Revised Statutes 30:152 (formerly Act 162 of 1940) provides as follows:

> "Every agency is authorized to lease its land for the development and production of minerals. School boards are authorized to lease sixteenth section and school indemnity lands for the development and production of minerals."

This statute was referred to and discussed exhaustively in the brief filed herein on behalf of the State of Louisiana and the State Mineral Board, intervenors. We understand their position, simply stated, to be that the phrase "sixteenth section and school indemnity lands" in the above statute means only upland or high land situated in such sections, and is pregnant with the exclusion of the beds of all navigable bodies of water situated in such 16th sections.

We find ourselves unable to agree with that interpretation, and our conclusion precludes the necessity of determining the navigability *vel non* of Mud Hole Bay and Mud Hole Bayou, either now or in 1812 or 1912.

Intervenors, in support of their position hereinabove stated, argue from Article 4, Section 2, of the Louisiana Constitution of 1921, as amended, which reads as follows:

> "Section 2. The Legislature shall have no power to contract or to authorize the contracting of any debt or liability on behalf of the State; or to issue bonds or other evidence of indebtedness thereof, except for the purpose of repelling invasion, or for the suppression of insurrection. Nor shall the Legislature alienate, or authorize the alienation of, the fee of the bed of any navigable stream, lake or other body of water, except for purposes of reclamation. In all cases the mineral rights on any and all property sold by the State shall be reserved, except where the owner or other person having the right to redeem may buy or redeem property sold or adjudicated to the State for taxes. This, however, shall not prevent the leasing of such lands and rights for mineral or other purposes." . . .

They contend that the provisions of the above quoted section of the Constitution deal exclusively with the State, and that the language

> . . . "This, however, shall not prevent the leasing of such lands and rights for mineral or other purposes."

must mean that "only the State is empowered to lease State owned lands, including all navigable water bot-

toms, for mineral developments" (Intervenors' Brief, p 36). We are unable to reach that conclusion.

It should be noted firstly that we are not dealing here with the alienation of the "fee of the bed of navigable waters"; nor is there a sale of State property and failure therein to reserve mineral rights.

Even if intervenors' contention as to the import of the above quoted language is correct, we know of no provision of law or of the Constitution prohibiting the delegation by the State to one of its own agencies its authority to lease "such lands and rights for mineral or other purposes". In our opinion, such authority was specifically granted by the Legislature in Act 162 of 1940 (now La. R.S. 30:152) which authorizes school boards "to lease sixteenth section and school indemnity lands for the development and production of minerals" without reservation or qualification, or exception of navigable water bottoms. The State Mineral Board, which is not mentioned in the Constitution, is, like the school board, merely another agency of the State of Louisiana. Its authority likewise derives from a legislative act, namely, R.S. 30:124. Since we have not found, nor have counsel pointed out, any provision of the Constitution which makes the Mineral Board synonymous with the State, intervenors' contention might also preclude the granting of mineral leases on State lands by the Mineral Board.

In the absence of a constitutional prohibition to that effect, we cannot conclude that the Legislature of Louisiana could not delegate to the State Mineral Board the right to lease certain State lands, and to School

Boards the right to lease others. We find nothing inconsistent or strained in permitting School Boards to grant leases on 16th section lands originally dedicated for school purposes and always treated differently from other State lands, and the Mineral Board to grant leases on other State lands.

In support of their position, defendants attempt to show that title to the high lands in such sections were acquired by grants from the Federal Government, and title to the navigable water bottoms therein were acquired by virtue of the State's "inherent sovereignty," and should, therefore, be treated differently.

It is our conclusion that, despite any difference in the manner of acquisition, the State now exercises full sovereignty over both high land and navigable water bottoms in such sections, and the Legislature could and did by R.S. 30:152, authorize School Boards to grant mineral leases covering the whole of said sections, without excepting therefrom, or reserving to another state agency, the navigable water bottoms located in said 16th sections.

Article 12, Section 18 of the Louisiana Constitution of 1921 contains the following language:

> "The parish school boards of parishes within which there lies a township or any portion of a township containing a Sixteenth Section or any portion of a Sixteenth Section shall be entitled to a portion of the proceeds derived from the sale of said Sixteenth Section or any portions thereof, including the sale of timber

> thereon and revenues arising from mineral leases, contracts, royalties and all other revenues arising from said sales, leases and contracts heretofore made or which may hereafter be consummated and" . . .

The phrase "or any portions thereof" indicates to us that unless some legal reason exists for separating a navigable water bottom physically located in a 16th section from the remainder of the section, then it must be considered as a portion of that section. We do not find any legal justification for such separation.

The Louisiana jurisprudence, as announced in State v. Humble Oil & Refining Company et al, 195 La. 457, 197 So. 140, indicates clearly that 16th section school lands have always been treatel separately from other public lands, viz:

> "As is well said by the judge of the district court in his reasons for judgment and as hereinabove pointed out, 'these Sixteenth Sections have always been considered as a separate and distinct part of the public lands. The machinery set up for the administration of these lands is now and has always been separate and distinct from that set up for the administration of other public lands. *To permit Act 100 of 1922* (now R.S. 30:152) *to remain in full force and effect in no wise interferes with the operation of Act 93 of 1936 or Act 80 of 1938* (now R.S. 30:121 et seq), and in our opinion the Legislature did not intend that the powers vested in the School Boards by Act 100 of 1922 should be taken from them by the general statutes.' "

> p. 145 (Emphasis and parenthetical inserts ours)

We note, of course, that the Supreme Court did not have before it specifically the issue of whether a navigable water bottom located in the 16th section is subject to lease by a school board, but we believe that the general tenor of that decision supports us in our decision not to permit the dissection of a 16th section into high land and navigable water bottoms for the purpose of separate administration of each.

If it has been a practice in the past for the Mineral Board to withhold approval of leases granted by school boards on 16th sections as to that portion thereof which constitutes navigable water bottoms, we can only say that in our opinion that denial is unjustified, and that a school board has the right specifically granted by the Legislature to grant mineral leases on everything included in a 16th section without reservation or exclusion whatsoever.

Intervenors, the State and the Mineral Board, argue in brief (p. 39)

> "If, in adopting Section 2 of Act 162 of 1940 (R.S. 30:152), the legislature had entertained the slightest intention of authorizing school boards to grant mineral leases under navigable water beds within 16th section lands, it would have said so expressly."

In our opinion, it is more reasonable to assume that the converse is true: that a limitation or qualification excepting navigable water bottoms from the au-

thority of school boards over 16th section lands would have been expressly stated in the act if the Legislature intended to divide the leasing authority. We feel that our conclusion is fortified by the following quote from State v. Humble Oil & Refining Co., *Supra:*

> "The language used in Act 93 of 1936 to describe the lands covered by its provisions is both general and particular. After providing generally in Section 4 that the Mineral Board was vested with authority to lease 'any lands belonging to the State or the title to which is in the public,' the statute proceeds to designate the kind of lands that are included in the general description, viz., 'rights of way, roadbeds, lake and river beds and other bottoms by whatever title acquired.' It will thus appear that the legislature was excessively careful to describe certain kinds of lands that were included in the grant to the State Mineral Board. *If it were the intention of the legislature that sixteenth section lands, which were under the jurisdiction of the school authorities, should be amenable to the provisions of the act, it would have been a simple matter for the legislature to also mention those lands in the statutory provisions. The legislature did not do this. No mention of the sixteenth section lands is made anywhere in the legislative act. The omission is significant and can not lead the earnest inquirer to any other conclusion than that the omission was intentional and that it was never within the contemplation of the legislature to divest the school boards of their control and administration of*

the sixteenth section lands." p. 144 (Emphasis ours)

Near the close of the trial of this matter, intervenors filed an Exception of No Cause or Right of Action which was referred to the merits. That exception is now overruled and judgment will be rendered for plaintiffs as prayed for except that the prayer for attorneys' fees is denied.

Let attorneys for plaintiffs prepare proper judgment in accordance with the foregoing to be submitted to counsel for defendant and intervenors, and to me to be read, rendered and signed in Open Court at Houma, Louisiana, at the earliest possible date.

Houma, Louisiana, this 28th day of April, A.D., 1964.

(Signed) P. DAVIS MARTINEZ
JUDGE, 17th Judicial
District Court, Parish of
Terrebonne, Louisiana,
Division "B".

JUDGMENT

State of Louisiana, 17th Judicial District Court
Parish of Terrebonne

Terrebonne Parish School Board, for the use and benefit of the Public Schools of Terrebonne Parish, Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara

versus No. 19,075

Texaco, Inc.

APPEARANCES:

Cobb & Wright,
Lloyd J. Cobb,
Mettery I. Sherry, Jr.,
Wilmore J. Broussard, Jr.,
Herbert W. Christenberry, Jr.,
Attorneys for Plaintiffs, Terrebonne Parish School Board, Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara.

Helm, Simon, Caffery & Duhe,
J. M. Duhe, Jr.
Daniel P. Hurley,
Attorneys for Defendant, Texaco, Inc.

Jack P. F. Gremillion, Attorney General
John L. Madden, Assistant Attorney General,
Edward M. Carmouche, Assistant Attorney General, Attorneys for Intervenors, the State of Louisiana and the State Mineral Board.

This cause came on for trial on the merits and after considering the pleadings, the stipulations, the evidence and the law, for the written reasons assigned on April 28, 1964, the Court rules as follows:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of Plaintiffs, Terrebonne Parish School Board, Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara and against Defendant, Texaco, Inc., formerly the Texas Company, assignee of the Union Oil Company of California, and against Intervenors, the State of Louisiana and the State Mineral Board, recognizing the validity and legality of that certain oil, gas and mineral lease granted by the Terrebonne Parish School Board to Robert B. Prentice and M. H. Marr dated January 10, 1953 recorded in COB 193, Folio 468 of the records of Terrebonne Parish and the rights of Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara, lessees, which were acquired by mesne conveyances from the said Robert B. Prentice, M. H. Marr and others under the aforesaid lease, are hereby recognized to be in full force and effect, covering the following described property to wit:

> Section 16, Township 21 South, Range 14 East containing 640 acres, more or less, Terrebonne Parish, Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the oil, gas and mineral lease covering that certain Tract 586 fully described therein granted by the State of Louisiana acting by and through the State Mineral Board to the Union Oil Company of California dated March 25, 1946, recorded in COB 150, Folio

354 of the records of the Parish of Terrebonne, constitutes a cloud on Plaintiffs' title insofar as it affects or may affect the aforesaid Section 16, and the said lease dated March 25, 1946 is hereby declared to be inapplicable to and null and void with respect to any and all rights accruing to Plaintiffs, Terrebonne Parish School Board, Robert W. O'Meara, Robert D. Sterling and Ruth L. Sterling as the owners of the aforesaid lease granted by Terrebonne Parish School Board dated January 10, 1953, and, Further, it is hereby ordered that the said lease dated March 25, 1946 be cancelled on the records of the Parish of Terrebonne insofar as it affects or may affect the said Section 16.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, Texaco, Inc., and Intervenors, State of Louisiana and State Mineral Board, be and they are hereby permanently restrained and enjoined from asserting any claim whatsoever in and to Section 16, T 21 S, R 14 E under the aforementioned lease dated March 25, 1946.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the exception of no cause or right of action filed by the State of Louisiana and the State Mineral Board be and it is hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of this proceeding be taxed against Defendant, Texaco, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' prayer for attorneys fees be denied.

Judgment read, rendered and signed in open Court at Houma, Louisiana, this 10th day of June, A.D., 1964.

(Signed) P. DAVIS MARTINEZ
JUDGE
17th Judicial District Court,
Parish of Terrebonne,
Louisiana, Division "B".

APPENDIX "B"

OPINION OF COURT OF APPEAL

Court of Appeal First Circuit State of Louisiana

Terrebonne Parish School Board, for the use and benefit of the Public Schools of Terrebonne Parish et al

versus No. 6306

Texaco, Inc.

APPEAL FROM THE 17TH JUDICIAL DISTRICT COURT PARISH OF TERREBONNE, STATE OF LOUISIANA HONORABLE P. DAVIS MARTINEZ, JUDGE PRESIDING

BEFORE:
ELLIS, LOTTINGER, LANDRY,
REID, BAILES, JJ. REID, J.

This is a suit for the cancellation of a mineral lease granted by the State Mineral Board to Union Oil Com-

pany of California, which was subsequently assigned to Texaco, Inc., insofar as such lease affects or may affect any and all rights of petitioners. The area in dispute is Section 16, Township 21 South, Range 14 East, Parish of Terrebonne, Louisiana. The petitioners are the Terrebonne Parish School Board and its lessees, Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara. The defendant is Texaco Inc. The State of Louisiana and the State Mineral Board have intervened and have adopted the position of Texaco Inc., including the adoption of all evidence offered by Texaco Inc., without offering any other evidence on their own behalf.

The Lower Court awarded judgment in favor of the petitioners and against the defendant and intervenors, the defendant and intervenors have each taken a suspensive appeal.

On March 25, 1946, a mineral lease designated as "State Mineral Lease No. 725" was granted by the State of Louisiana to Union Oil Company of California covering a large area known as Tract 586, the description of which specifically excluded from said lease "school and tax lands." This mineral lease was subsequently assigned to Texaco Inc. who now is the exclusive owner thereof. Although at the outset of this suit both Union Oil Company of California and Texaco Inc. owned an interest in said lease, and were both named defendants, the interest of Union Oil Company of California has subsequently been assigned to Texaco Inc., who now is the sole owner of the said mineral lease, and Union Oil Company of California has been alllowed to withdraw as a defendant in this suit.

Subsequently, on January 6, 1948, the Terrebonne Parish School Board granted a mineral lease to Union Oil Company of California on Section 16, Township 21 South Range 14 East. This lease was approved by the State Mineral Board and the Attorney General's Office as to form and legality. This mineral lease was released by the lessee on January 31, 1950.

On January 10, 1953 the Terrebonne Parish School Board granted a mineral lease on the same property to Robert B. Prentiss and M. H. Marr which lease was subsequently acquired in full ownership by mesne conveyances by Robert D. Sterling, Ruth L. Sterling and Robert W. O'Meara. This lease was approved on January 14, 1953 by the State Mineral Board and by the Attorney General's Office as to form and legality, and in due course a well was successfully drilled on the property covered by this lease. Shut-in royalties were paid the School Board until subsequent to the institution of the present suit when the well was put on production. On March 24, 1959 the School Board and its mineral lessees, who hereafter will collectively be referred to as petitioners, instituted this proceeding to cancel the lease above mentioned from State to Union Oil Company of California as it effects the 16th Section involved.

On May 13, 1959 the State of Louisiana and the State Mineral Board intervened in this suit, uniting with defendants, as the defense and the prayer of the State of Louisiana and the State Mineral Board are identical to that of Texaco Inc. they will all hereafter be referred to as defendants.

The request made by the State and Mineral Board to withdraw was denied after which they applied to this Court for supervisory writs on March 18, 1962. This application was denied on April 16, 1962. The Supreme Court of Louisiana on May 24, 1962, denied their application for remedial writs.

The defendants contend that the 16th Section involved herein, or a part thereof, was the bed of a navigable waterway in the year 1812 when Louisiana became a State, or since that time said waterway has become navigable, and, therefore, the title rests in the State of Louisiana by virtue of its inherent sovereignty, and only the State Mineral Board has the right to lease water bottoms in a 16th Section. The petitioners, on the contrary, assert that the Louisiana Legislature has granted School Boards full authority over 16th Sections regardless of the physical characteristics of said sections, and therefore, that 16th Sections were dedicated by the United States and reserved for public schools as a sacred trust prior to Louisiana's Statehood. Louisiana became a State subject to, and charged with, the prior trust and therefore, while legal title to this 16th Section is in the State of Louisiana as trustee, by virtue of the Acts of Congress of April 21, 1806 (2 Stat.391, Ch. 39) March 3, 1811 (2 Stat. 662, 665, Ch. 46, Sec. 10) and the Louisiana Protraction Statute of April 23, 1912 (37 Stat. 90, Ch. 88) such title is held in trust for the benefit of the public schools, which trust has been recognized and acknowledged by State laws. In substance, the petitioners maintain that it is immaterial whether or not this 16th Section, or any part thereof, was the bed of a navigable waterway in 1812 or thereafter.

The District Court, after trial thereof, rendered judgment in favor of petitioners and against defendants. The defendants have taken suspensive appeal.

The property in question concerns the bed of what is known as Mud Hole Bay and Mud Hole Bayou situated in Section 16, Township 21 South, Range 14 East. Mud Hole Bay and Mud Hole Bayou are situated along the Louisiana Coast line. The Bay comprises the greater portion of Sections 15 and 16 of said township and range and Mud Hole Bayou runs in a southerly direction to Mud Hole Bay. The defendants have agreed that the high lands situated in Section 16 are owned by the State of Louisiana, but held in trust for the schools.

On November 3, 1762 Louis XV ceded the entire Province of Louisiana to the King of Spain by the Treaty of Fontainebleau. Subsequently, on October 1, 1800 Spain transferred the Territory to France by Treaty of St. Ildefonso, to be delivered on October 18, 1802. The United States acquired the territory from France by the Treaty of Cession on April 30, 1803, and on that date the title to the entire Louisiana Territory so purchased vested in the United States.

During the year 1785 the Continental Congress adopted an ordinance which reserved and set aside the 16th Section of every township for the public schools within the said township. (1 Stat. 563).

The Constitution of the United States was adopted in 1789 and Article IV, Sec. 3, Clause 2 thereof provides as follows:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

On May 18, 1796 Congress adopted an Act (1 Stat. 464, Ch.29, now 43 U.S.C.A. 751) which provides for the rectangular system of surveying. The Act provides that each township shall be six miles square, subdivided into thirty-six sections, each one mile square. The sections are to be numbered respectively, beginning with No. 1 in the northeast corner, and proceeding west and east alternatively, through the township with progressive numbers, until thirty-six sections are surveyed.

By Acts of Congress on April 21, 1806 (2 Stat. 391, Ch. 39, Sec. 11) and March 3, 1811 (2 Stat. 662, 665, Ch. 46, Sec. 10), the President of the United States was authorized to sell certain lands in the Territory of Orleans (now the State of Louisiana), however these statutes expressly excluded sections numberd 16 which was reserved for the support of schools. These said Acts provided that:

" . . . All such lands (public lands lying in the Territory of Louisiana) shall, with the exception of the Section 'number sixteen' which shall be reserved in each township for support of schools within the same . . . be offered for sale to the highest bidder . . . "

The wording of these Acts declares that every 16th Section is reserved for the schools within same, and the petitioners contend that such wording includes all property situated within the boundary of such sections whether underlying navigable waters or not. As the schools of the entire Parish of Terrebonne are owned and operated by the Public School System of said Parish, under the administration of the Terrebonne Parish School Board, it is clear that the schools within said township, if any, are under the control and administration of the School Board, and that the Public School System of Terrebonne Parish is synonymous with the schools of the township.

Louisiana was the first State formed out of the Louisiana Purchase and was admitted into the Union by virtue of the Acts of February 20, 1811 (2 Stat. 641, Ch. 21); April 8, 1812 (2 Stat. 701, Ch. 50); April 14, 1812 (2 Stat. 708, Ch. 57).

The record discloses that Rightor and McCollam, official government surveyors, did survey a portion of Township 21, South, Range 14 East during the winter and spring of the year 1838. This Township map was approved by the Surveyor General of Louisiana on December 8, 1842. This map shows that the southern boundary and a portion of the eastern boundary of Section 15 was surveyed in place. None of the boundaries of Section 16 were so surveyed, however, the southeastern corner thereof was located.

By protraction, which was authorized later, the official government survey now shows Section 16 as containing the full 640 acres of a regular section.

On April 23, 1912 the Congress of the United States enacted the Louisiana Protraction Statute (37 Stat. 90), which Act declares as follows:

> " Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That all the unsurveyed lands in the State of Louisiana which are shown by official protraction of the government surveys heretofore made to be embraced within sections numbered sixteen and which lie in the same township as land which have been certified or patented in that State under the Act approved March second, eighteen hundred and forty-nine, entitled 'An Act to aid the State of Louisiana in draining swamp lands therein', and the Act approved September twenty-eight, eighteen hundred and fifty, entitled 'An Act to enable the State of Arkansas and other States to reclaim swamp lands within their limits' to be, and the same are hereby, fixed, reserved, and confirmed to that State for the benefit of public schools as though the official surveys had been regularly extended over such townships."

Defendants contend that the phrase "sixteenth section and school indemnity lands" refers only to high lands situated in such section, and excludes the beds of all navigable bodies of water situated in such sections. In support of their position they cited Article IV Section 2 of the Louisiana Constitution of 1921, as amended, which provides:

"Section 2. The Legislature shall have no power to contract or to authorize the contracting of any debt or liability on behalf of the State; or to issue bonds or other evidence of indebtedness thereof, except for the purpose of repelling invasion, or for the suppression of insurrection. Nor shall the Legislature alienate, or authorize the alienation of, the fee of the bed of any navigable stream, lake or other body of water, except for the purposes of reclamation. In all cases the mineral rights on any and all property sold by the State shall be reserved, except where the owner or other person having the right to redeem may buy or redeem property sold or adjudicated to the State for taxes. This, however, shall not prevent the leasing of such lands and rights for mineral or other purposes . . ."

Appellant sets out the following specifications of error:

"(1) In failing to decide that Mud Hole Bay and Mud Hole Bayou were navigable when the State was admitted into the Union, having remained so since that time, and have vested in the State in its sovereign capacity free of any reservation of lands for the benefit of public schools.

(2) In deciding that the Terrebonne Parish School Board was empowered to lease the water bottoms in dispute under the provisions of the State Agency Leasing Act even if title thereto was vested in the State by virtue of its

inherent sovereignty and in a proprietary capacity.

(3) In assuming that Mud Hole Bay and Mud Hole Bayou form part of Section 16, T-21-S, R-14-E, even though navigable when Louisiana was admitted to statehood.

(4) In failing to pass upon and overrule the pleas of estoppel."

We will take up the question of navigability of Mud Hole Bay and Mud Hole Bayou first. The Trial Judge held that it didn't matter whether Mud Hole Bay was navigable or not. The Terrebonne Parish School Board had the power to lease or to lease that portion which would be a part of Section 16 as projected.

Almost the entire record is made up of testimony concerning the navigability of Mud Hole Bay. There is lay testimony that as far back as the memory of man will permit water bodies here involved have been navigable.

Winfield Dehart, who was 71 years of age, testified that he had fished oysters and shrimp in Mud Hole Bay since he was 10 or 11 years old. He fished oysters until about 1925 and since that time had been engaged in shrimping. He testified that as long as he could remember the Bay had been used for all types of commercial fishing. In the early days oysters were fished in sailboats, twenty-eight to thirty feet long and the vessels had drafts of two and one-half feet and load capacity of about 45 barrels of oysters. Later power boats of the same type with flat and round bottoms

were used. He further testified that Mud Hole Bay had not changed since he first knew it. He said it had a depth of three to five feet under normal conditions and average drop in tide of one to one and a half feet. He also testified that Mud Hole Bay was connected with the Gulf of Mexico through Mud Hole Bayou, Cross Bayou and Taylor's Bayou.

Ulysse Plessala, who was 86 years old testified he had been engaged in commercial fishing of oysters in Mud Hole Bay since he was 16 years old. At that time there was around twenty oyster fishermen operating in the Bay and the boats used were sailing boats forty to fifty feet long. Afterwards power boats were used. He also testified that Mud Hole Bay has a depth of five and a half to six feet and fall of tide from one to one and a half feet. He further testified that Mud Hole Bay was connected by natural bayous to the Gulf of Mexico and that one of these bayous, Cross Bayou, had a depth of twenty feet.

Arthur A. Pierron, 71 years old, testified he had been a commercial oyster fisherman since he was 16 years old. In the beginning sailboats were used and that the one he operated measured 40 x 12 feet. Beginning about 1908 power boats of approximately the same size were used. Sailboats had drafts of 24 inches and the power boats 32 inches and there were about fifty oyster fishermen working in Mud Hole Bay, marketing their oysters at a market at Taylor Bayou. He further testified that oyster buyers would come to buy oysters and travel in motor boats bearing 100 to 150 barrels of oysters, would pass through Mud Hole Bay most of the time. He further testified that during the prohibition era men hauled moonshine whiskey

through Mud Hole Bay in big power boats, drawing five feet of water and that Mud Hole Bay has always been subject to the rise and fall of the tide. He corroborated the other witnesses in that boats traveled from Mud Hole Bay to the Gulf by connecting natural bayous.

Clifford Smith, a Civil Engineer, testified that he had gone on Mud Hole Bay for a period of about ten years, using all types of outboards ranging from 12 feet to 16 feet and 18 feet with motor horsepower from 5 to 75. On one occasion he crossed the Bay on a small barge and that he had been all over the Bay in a 40 foot boat. He corroborated the other witnesses in his testimony that Mud Hole Bay is connected with the Gulf of Mexico with natural bayous and channels and is subject to the ebb and flow of the tide. They all testified that during the winter months season, the water level of Mud Hole Bay was lowered by the action of brisk north wind and this produces some difficulty in navigating certain portions of the Bay, which was typical of all bays in the coastal areas of the State.

In addition the defendant placed three expert scientists on the witness stand, namely, Dr. Harold Anderson, an expert in Micro-Paleontologist and an Ecologist, who had made extensive studies in micro-organisms, associated with delta building in Louisiana. Dr. Frank Welder, an expert in Geology and Geomorphology, who is known for his studies in delta building processes and a history of Louisiana deltas. Dr. Allen Walton, an expert geochemist, with particular experience in the use of Carbon 14 dating methods.

In addition there were several photographs of boats

offered in evidence showing them being operated on Mud Hole Bay.

Without going into the detail of the testimony of these three scientists, the sum and substance of their testimony is that Mud Hole Bay was in existence and Mud Hole Bayou in existence and substantially in their present form before the admission of the State to the Union.

Plaintiffs contend that during the winter months there were shallows created in certain portions of the Bay during the winter season by the action of strong north winds. Our Courts and the United States Supreme Court have repeatedly held that bodies of water are navigable despite of the impediments to navigation by natural obstructions such as falls, rapids, drafts, shifting sand bars and so forth.

The leading case on this point is United States versus Holt State Bank 46 S. Ct. 196; 270 U.S. 46, held as follows:

> " In seasons of great drought there was difficulty in getting boats up the river and through the lake; but this was exceptional, the usual conditions being as just stated. Sand bars in some parts of the lake prevented boats from moving readily all over it, but the bars could be avoided by keeping the boats in the deeper parts or channels. Some years after the lake was meandered, vegetation such as grows in water got a footing in the lake, and gradually came to impede the movement of boats at the end of each growing season, but

offered little interference at other times. Gasoline motor boats were used in surveying and marking the line of the intended ditch through the lake and the ditch was excavated with floating dredges.

Our conclusion is that the evidence requires a finding that the lake was navigable within the approved rule before stated."

See also United States v. Utah, 283 U.S. 64, 51 S.Ct. 438; United States v. Appalachian Electric Power Co., 311 U.S. 377, 61 S.Ct. 291; Police Jury of Bossier Parish, 38 La. Ann. 752; D'Albora v. Garcia, 144 So. 2d 911; State v. Capdeville, 146 La. 94, 83 So. 421; State v. Jefferson Island Salt Mining Company, Incorporated 183 La. 304, 163 So. 145. In the case State v. Jefferson Salt Mining Company, supra, the Court held as follows:

" Having determined the navigability of the Lake itself, I am forced to likewise conclude from the historical records, and from the testimony of the inhabitants, though they be at variance with each other in some respects, that the outlet which I have termed Bayou Carlin contained a channel in the marsh of sufficient depth to afford communication, in small boats, with Vermillion Bay. It is admitted that the channel of that Bayou ran up to the marsh. Evidence has been offered to show that sixty years ago, a channel was made through the marsh by the inhabitants, through the cutting of weeds and the driving of cattle for a distance of one and three-quarters

miles. It is likewise shown that this marsh periodically contained w a t e r, though at other times going dry. However, in spite of these facts, there can be no doubt in my mind that this Bayou, even t h o u g h its channel in the marsh was of a very limited n a t u r e, in its service, was sufficient for purposes of communication."

The plaintiffs rely on a case of Olin Gas Transmission Corporation v. Harrison, 132 So. 2d 721. This Court held that Round Lake was not a navigable body of water. However, that case is differentiated from this case because the Courts found that the lake was a landlocked fresh water lake until opened recently by artificial cuts made by trappers and hunters. The lake was never used commercially and would not come under the qualifications for a navigable body of water.

All the evidence submitted by the defendant is in the record uncontroverted. Plaintiffs rely on an old survey made by Rightor and McCollam. This survey sets out Sections 15 and 16, T 21 S, R 14 E. The surveyor lists the land in Sections 15 and 16 as low, worthless marsh. This survey was made in 1838. However, the field notes show that the surveyor never attempted to survey this land. He went to the southwest corner of Section 15, which is the southeast corner of Section 16 and then proceeded down the line between Sections 21 and 22 to Bayou Delage. He put an iron stake at the corner common to Sections 21, 22, 27 and 28 but he definitely did not go on Section 16 at all. Actually Section 16 has never been surveyed. After the Act of 1912 (Protraction Act of 1912, 37 Stat. 90) swamp lands in 16 sections were reserved to the State. However,

this is one hundred years after the admission of Louisiana to the Union. The title of the State to the navigable waters under the inherent sovereignty of the State had already passed to Louisiana.

The case of United States v. State of Wyoming, 67 S.Ct. 1319 held as follows:

> " Under Wyoming enabling act providing that Sections Nos. 16 and 36 in each township are hereby granted to the State for support of common schools, title to unsurveyed school land passes to State only at date of survey and then only where Federal Government has made no other disposition of land prior to that time.
>
> Defendants vigorously assert that the phrase "but shall be received for school purposes only" completely and irrevocably divested the Federal Government of power to dispose of or to deal with any Sections 16 and 36 of the public lands in the State not sold or otherwise disposed of prior to the passage of the Enabling Act. This phrase read in connection with the language of the present grant in Paragraph 4, it is asserted, reveals a clear intention to vest immediately in the State an indefeasible interest in all such lands. *We do not believe that the language should be so construed.*"

You will note that this decision rejects the contention that the school lands were completely and irrevocably divested from the Federal Government. Title to the school lands does not pass from the Federal

Government until after a survey has been made and approved. There had been no survey made of this 16th section and in the meantime by virtue of it being navigable the title to the bed of Mud Hole Bay and Mud Hole Bayou passed to the State of Louisiana.

The case of Pollard v. Hagan, Howard 3, page 212, 11 L. Ed.565 in the syllabus held as follows:

> "1. When Alabama was admitted into the Union it became entitled to soil under navigable waters, same as original states, nothing therein remained to the United States but the public lands. These do not include lands below high water in navigable streams.
>
> 2. The shores of navigable waters and the soils under them were not granted by the Constitution to the United States but were reserved to the States respectively.
>
> 3. The new States have the same rights, sovereignty and jurisdiction over this subject as the original States."

Our Courts have repeatedly held that rivers or bodies of water, which are navigable in fact are navigable in law. The case of United States v. Utah, 283 U.S. 64, 75 L. Ed. 844, as follows:

> " Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used or are susceptible of being used,

> in this ordinary conditions, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water (quoting from The David Ball 10 Wall 557,563 19 L. Ed. 999,1001)."

Counsel for plaintiff urges and the Lower Court so held that school sections included navigable water bodies.

They cite the case of Jones v. Soulard, 65 U.S. 41, 16 L. Ed. 604; Board of Directors v. New Orleans Land Company, 138 La. 32, 70 So. 27. They contend that the Soulard case squarely holds that a navigable water bottom, namely the Mississippi River, was included in a school grant. However, reading this case shows that the only area in dispute was the sand bar attached to the adjoining shore and the only issue involved was whether it enured to the riparian owners.

The New Orleans Land Company case did not involve right to the navigable water bottom. In that case Bayou St. John ran through the township but it did not border on Section 16.

Plaintiffs also contend that in as much as the State selected certain sections of Louisiana as indemnity lands for lands that they did not get, including Section 16 and the United States approved of all of them except Section 16, stating that it was reserved for public schools recognizes that Section 16 belongs to the school board.

For the reason heretofore stated herein the title of 16 sections had not passed to the school board be-

cause there had been no actual survey at that time even by protraction. It is admitted that certain portions of Section 16 do belong to the school board because the high land portions is not in dispute in this case. Until there was a survey and the acreage fixed, the title to the 16th Section was still in the Federal Government. However, to determine the acreage of the high land and the acreage of the swamp lands or water bottoms it would be necessary that a survey be made before any claims for indemnity land for this section could be allowed.

We next come to the second specification of error, namely, that the Terrebonne Parish School Board was empowered to lease the water bottoms in dispute under the provisions of the State Agency Leasing Act even though the title thereto was vested in the State by virtue of its inherent sovereignty. We fail to agree with our Learned Brother below in his holding, and there is no doubt that under Revised Statutes 30:152 does read as follows:

> "Every agency is authorized to lease its land for the development and production of minerals. School boards are authorized to lease sixteenth section and school indemnity lands for the development and production of minerals."

Plaintiff contends that under LSA-RS 30:152 the school boards are authorized to lease 16 sections and school inedmnity lands for the development and production of minerals without qualification or reservation and that it does not except navigable water bot-

toms. They cite State v. Humble Oil Company, 195 La. 457, 197 So. 140 which holds as follows:

> "* * * If it were the intention of the legislature that sixteenth section lands, which were under the jurisdiction of the school authorities, should be amenable to the provisions of the act, it would have been a simple matter for the legislature to also mention those lands in the statutory provisions. The legislature did not do this. No mention of the sixteenth section lands is made anywhere in the legislative act. The omission is significant and can not lead the earnest inquirer to any other conclusion than that the omission was intentional and that it was never within the contemplation of the legislature to divest the school boards of their control and administration of the sixteenth section lands."

This act gives the school board the right to lease sixteenth section or school indemnity land but it does not give the school board the right to lease beds of navigable waters. In view of our holding that this is a navigable waters, they do not come under the provision of this act.

Plaintiffs then urge that in as much as the State Mineral Board approved the lease between the plaintiffs they are now estopped from asserting title to it. The Resolution approving the mineral lease from Terrebonne School Board provides as follows:

> " This resolution is adopted with the understanding that the approval of the mineral lease

aforesaid has been made on the sole basis of the requirements of statute express or implied governing the action of this Board in considering State Agency leases, and that the source and nature of lessor's title has not been inquired into or considered in connection with the action taken by this Board in approving the lease."

This was a qualified approval and had no bearing upon the title to the land or the water bottom in dispute.

The State of Louisiana filed Exception of no Right or Cause of Action based on the fact that the lease was not signed and was therefore "Nudum Pactum" for lack of mutuality. In view of our findings herein, we feel it is not necessary to discuss this matter.

For the foregoing reasons it is ordered that the judgment of the Lower Court be reversed and judgment rendered in favor of the defendant and against the plaintiffs decreeing and disallowing all of the claims and demands of plaintiffs in this matter and recognizing and decreeing that title to that part of the beds and bottoms of Mud Hole Bay and Mud Hole Bayou, involved herein is owned and held by the State of Louisiana by virtue of its sovereignty and in a proprietary rights and not for the benefit of the schools. Further decreeing plaintiffs have no right, title or interest in and to beds of said waters and no part thereof is subject to oil, gas and mineral leases by the Terrebonne Parish School Board as lessor in favor of Robert E. Prentice and M. H. Marr, dated January 10, 1953 but that the portions of the beds of said waters lying within the outlines of Tract 586 described in

Oil, Gas and Mineral Lease granted by the State Mineral Board to the Union Oil Company of California on March 25, 1946 is subject to said lease, which is now held by Texaco, Incorporated, and that all costs in this matter be borne by the plaintiffs.

REVERSED AND RENDERED.

APPENDIX "C"

ORDER OF COURT OF APPEAL DENYING REHEARING

COURT OF APPEAL
First Circuit
State of Louisiana

Baton Rouge, La. September 27, 1965

Cobb & Wright
Attorneys at Law
Whitney Bldg.
New Orleans, Louisiana.

Dear Sir:

You are advised that an application for a rehearing has this day been Denied in the following case, in which you are counsel of record:

Terrebonne Parish School Board, etc.
versus 6306
Texaco, Inc.

Yours very truly,

John E. Miller
Clerk of Court

APPENDIX "D"

DECREE OF SUPREME COURT OF LOUISIANA DENYING REVIEW

SUPREME COURT OF LOUISIANA
New Orleans, 70112

No. 47,958 November 23, 1965

Terrebonne Parish School Board
for the use and benefit of the
Public Schools of Terrebonne Parish et al
vs. Texaco, Inc.

In Re: Terrebonne Parish School Board, etc., et al applying for certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of Terrebonne

Writ refused. On the facts found by the Court of Appeal, there is no error of law in its judgment.

/s/ JWS
/s/ JBF
/s/ JBH
/s/ FWH
/s/ EHMcC
/s/ WBH
/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
November 23, 1965
/s/ HAROLD A MOISE, JR.
Deputy Clerk

APPENDIX "E"

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO AND INCLUDING APRIL 7, 1966

SUPREME COURT OF THE UNITED STATES

No. ------ October Term, 1965

TERREBONNE PARISH SCHOOL BOARD, FOR THE USE AND BENEFIT OF THE PUBLIC SCHOOLS OF TERREBONNE PARISH, ROBERT D. STERLING, RUTH L. STERLING AND ROBERT W. O'MEARA,

Petitioners,

versus

TEXACO, INC., ET AL

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 7, 1966.

(Signed) HUGO L. BLACK
Associate Justice of the
Supreme Court of the United
States

Dated this 21st day of February, 1966.

Office-Supreme Court, U.S.
FILED
MAY 4 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 1133

TERREBONNE PARISH SCHOOL BOARD, FOR THE USE AND BENEFIT OF THE PUBLIC SCHOOLS OF TERREBONNE PARISH, ROBERT D. STERLING, RUTH L. STERLING AND ROBERT W. O'MEARA,

Petitioners,

versus

TEXACO INC.,

Respondent,

STATE OF LOUISIANA AND STATE MINERAL BOARD,

Intervenors-Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

PAUL F. SCHLICHER,
135 East 42nd Street,
New York, New York,
Attorney for Respondent,
Texaco Inc.

WILEY G. LASTRAPES,
DANIEL P. HURLEY,
New Orleans, Louisiana,
JOHN M. DUHE, JR.,
New Iberia, Louisiana,
CHARLES F. BAILEY,
Lafayette, Louisiana,
Of Counsel.

INDEX.

	Page
LIST OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	5
ARGUMENT:	
1. Mud Hole Bay and Mud Hole Bayou are owned by the State in its sovereign capacity, and form no part of Section 16, T-21-S, R-14-E.	8
2. The State of Louisiana acquired in a proprietary capacity by virtue of its inherent sovereignty the bottoms of all navigable inland waters within its boundaries upon admission into the Union in 1812, free of any reservation of lands for public schools	13
3. Even if assumed, arguendo, that Congress intended by the Acts of April 21, 1806 and March 3, 1811 to include the bottoms of navigable waters in the 16th Sections to be thereafter created by survey, sovereignty ownership of the water bodies in dispute would still prevail	18
4. The selection of the 16th Section here involved as swamp land, and the Land Department's rejection thereof because previously reserved for schools, do not prevent the State from asserting its sovereignty ownership of Mud Hole Bay and Mud Hole Bayou	23
CONCLUSION	25
CERTIFICATE OF SERVICE	26

LIST OF AUTHORITIES.

Cases: Page

Board of Directors vs. New Orleans Land Co., 138 La. 32, 70 So. 27 9

Borax Consolidated vs. City of Los Angeles, 296 U.S. 10, 56 S. Ct. 23 .....11, 14, 16, 24

Bres vs. Louviere, 37 La. Ann. 736 9

Doolan vs. Carr, 125 U.S. 618, 31 L. Ed. 844 24

Cox vs. Hart, 260 U.S. 427, 43 S. Ct. 154 22

Hardin vs. Jordan, 140 U.S. 371, 35 L. Ed. 428 24

Heydenfeldt vs. Daney Gold & Silver Mining Co., 93 U.S. 634, 23 L. Ed. 995 .....3, 19, 22

Justheim vs. McKay, 229 Fed. (2) 29 (cert. denied 351 U.S. 933) 10, 11, 18, 20

Knight vs. United Land Association, 142 U.S. 161, 35 L. Ed. 974 .....14, 16, 24

Lauve vs. Wilson, 114 La. 699, 38 So. 522 9

McDade vs. Bossier Levee Board, 109 La. 625, 33 So. 628 ..... 4, 23

McGilvra vs. Ross, 215 U.S. 70, 54 L. Ed. 95 .....11, 17

Mann vs. Tacoma Land Co., 153 U.S. 273, 38 L. Ed. 714 .....10, 11, 14, 17

Massachusetts vs. New York, 271 U.S. 65, 46 S. Ct. 357 .....14, 16

Minnesota vs. Hitchcock, 185 U.S. 373, 46 L. Ed. 954 .....3, 11, 19

Missouri K. & T. Railroad Co. vs. Roberts, 152 U.S. 114, 38 L. Ed. 377 11

Newhall vs. Sanger, 92 U.S. 761, 23 L. Ed. 769 10

New Mexico vs. Ickes, 72 Fed. (2) 71 (cert. denied 293 U.S. 596) 19, 20

Oklahoma vs. Texas, 258 U.S. 574, 42 S. Ct. 406 14

Pollard vs. Hagan, (1845), 3 How. 212, 11 L. Ed. 565 .....10, 14, 16

San Francisco vs. LeRoy, 138 U.S. 656, 34 L. Ed. 1096 16

LIST OF AUTHORITIES—(Continued)

Page

Scott vs. Lattig, 227 U.S. 229, 57 L. Ed. 490 14
Shively vs. Bowlby, 152 U.S. 1, 38 L. Ed. 331 ..10, 11, 14, 16, 17
State of Louisiana vs. Aucoin, 206 La. 786, 20 So. (2) 136 .....21, 22
State of Alabama vs. State of Texas, 347 U.S. 272, 74 S. Ct. 481 .....17, 18
State of Louisiana vs. Bayou Johnson Oyster Co., 130 La. 604, 58 So. 405 ..... 4, 23
State of Louisiana vs. Bozeman, 156 La. 635, 101 So. 4 24
State of Utah vs. Bradley Estates, Inc., 223 Fed. (2) 129 (cert. denied 350 U.S. 841) 19
Union Pacific Railroad Co. vs. Harris, 215 U.S. 386, 54 L. Ed. 246 11
United States vs. Aikens, 84 Fed. Supp. 260 22
United States vs. California, 332 U.S. 19, 67 S. Ct. 1658 14
United States vs. Holt State Bank, 270 U.S. 49, 46 S. Ct. 197 .....11, 14, 16, 17, 18
United States vs. Louisiana, 339 U.S. 699, 70 S. Ct. 914 14
United States vs. Louisiana, et al., 363 U.S. 1, 80 S. Ct. 961 14
United States vs. Mission Rock Co., 189 U.S. 391, 47 L. Ed. 865 .....14, 16
United States vs. Morrison, 240 U.S. 190, 60 L. Ed. 599 .....3, 19, 20, 22
United States vs. Oregon, 295 U.S. 1, 55 S. Ct. 610 ..14, 16
United States vs. Sweet, 245 U.S. 563, 38 S. Ct. 193.. 3, 19
United States vs. Texas, 339 U.S. 707, 70 S. Ct. 918.. 14
United States vs. Wyoming, 331 U.S. 440, 67 S. Ct. 1319 .....2, 3, 19, 20, 22
Wisconsin vs. Lane, 245 U.S. 427, 38 S. Ct. 135 ..3, 19, 20

LIST OF AUTHORITIES—(Continued)

	Page
Constitution and Statutes:	
United States Constitution:	
Article IV, Sec. 3, Clause 2	14, 15
Federal Statutes:	
Act of Congress, May 18, 1796 (1 Stat. 464)	8
Act of Congress, April 21, 1806 (2 Stat. 391)	3
Act of Congress, February 20, 1811 (2 Stat. 641)	9, 21
Act of Congress, March 3, 1811 (2 Stat. 662)	3
Act of Congress, April 8, 1812 (2 Stat. 701)	9
Act of Congress, May 20, 1826 (4 Stat. 179)	12
Act of Congress, March 2, 1849 (9 Stat. 352)	4
Act of Congress, September 28, 1850 (9 Stat. 519)	4
State Court: Appeal: Certiorari, 28 U.S.C.A. 1257(3)	8
Deficiencies in School Land Grants to States, 43 U.S.C.A. 851 et seq.	11, 12
Act of Congress, April 23, 1912 (37 Stat. 90)	4
Treaty of Cession, April 30, 1803 (8 Stat. 202)	21
State Statutes:	
L.S.A. 30:121 et seq.	5
L.S.A. 30:151 et seq.	4
Other Authorities:	
Manual of Instructions for Surveys of the Public Lands of the United States (1947) Section 4, Page 3	11
State of Idaho, 37 Interior Decisions, 430, 433	12

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 1133.

TERREBONNE PARISH SCHOOL BOARD, FOR THE USE AND BENEFIT OF THE PUBLIC SCHOOLS OF TERREBONNE PARISH, ROBERT D. STERLING, RUTH L. STERLING AND ROBERT W. O'MEARA,

Petitioners,

versus

TEXACO INC.,

Respondent,

STATE OF LOUISIANA AND STATE MINERAL BOARD,

Intervenors-Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

STATEMENT OF THE CASE.

This case presents for decision the basic question whether navigable water bodies (being portions of Mud Hole Bay and Mud Hole Bayou) located within the protracted outlines of unsurveyed Section 16, T-21-S, R-14-E, Terrebonne Parish, Louisiana, belong to the State of Louisiana in a proprietary capacity

by virtue of its inherent sovereignty or belong to the State in trust for public schools.

This issue was raised in a proceeding filed by Petitioners to have a mineral lease granted by the Terrebonne Parish School Board recognized as covering such navigable bodies of water and to seek partial cancellation of a prior mineral lease granted by the State of Louisiana and now held by Respondent, Texaco Inc. The School Board lease describes and purports to cover "Section 16, T-21-S, R-14-E, Terrebonne Parish, Louisiana", the school section in question. The State lease covers "all State owned lands, water bottoms, etc. located within a described circle which embraces, with other property, the entire area within the protracted outlines of said section.

The petition herein (p. 22) concedes that said 16th Section was never surveyed. The record shows that the southeast corner thereof was the only corner established by the governmental surveyors (as a corner common to Sections 15, 21 and 22), and that all exterior section lines were simply protracted or projected from said established corner.[1] Within the unsurveyed outlines of said section are land areas, and also navigable water bodies consisting of portions of Mud Hole Bay and Mud Hole Bayou, and in their petition in the trial court, plaintiffs claimed that both the land and water areas are public lands comprising a 16th School Section.

However, the land areas were eliminated from the suit by the pleadings (R., Vol. 1, 22, 33), and by an

[1] Petitioners' Exhibits 36 and 37. *United States vs. State of Wyoming*, (1947) 331 U.S. 440, 67 S. Ct. 1319 conclusively establishes that this does not constitute the survey of a section.

express disclaimer executed by Defendant, Texaco Inc., the owner of the State lease (Def. Exhibit 3; R., Vol. 2, 7), leaving only Mud Hole Bay and Mud Hole Bayou as the areas in dispute.

The basic opposing contentions of the litigants are clear cut: Petitioners contend that title to the water bodies in controversy within the outlines of said 16th Section vested in the State of Louisiana, in its capacity as Trustee for public schools, under the Acts of Congress of April 21, 1806 (2 Stat. 391) and March 3, 1811 (2 Stat. 662) reserving the 16th Section of each township, as might thereafter be created by survey, for the benefit of the schools of such township. Opposing this, Respondent maintains that when Louisiana was admitted to Statehood in 1812, all inland water bodies which were then navigable, including Mud Hole Bay and Mud Hole Bayou, vested in the State by virtue of its inherent sovereignty, free and clear of the school land reservations made in the Acts of 1806 and 1811.

Petitioners concede that the school title does not vest in 16th Sections reserved under the Acts of 1806 and 1811 until there has been an actual survey of the section and an official approval thereof.[2] However, they claim that such title to the unsurveyed 16th Section here involved vested retroactively to

---

[2] Petition, pp. 19, 20. The necessity for a survey and its approval as the basis for passage of title to a school section is firmly established by decisions of this Court: ***Heydenfeldt vs. Daney Gold & Silver Mining Company***, 93 U.S. 634, 23 L. Ed. 995; ***Minnesota vs. Hitchcock***, 185 U.S. 373, 46 L. Ed. 954; ***United States vs. Morrison***, 240 U.S. 190, 60 L. Ed. 599; ***United States vs. Sweet***, 245 U.S. 563, 38 S. Ct. 193; ***Wisconsin vs. Lane***, 245 U.S. 427, 38 S. Ct. 135; ***United States vs. Wyoming***, 331 U.S. 440, 67 S. Ct. 1319.

December 8, 1842, the date of approval of the partial survey of the township (Petitioners' Exhibit 36), by virtue of the Protraction Act of April 23, 1912 (37 Stat. 90). That act is limited to townships where the State of Louisiana acquired swamp lands by certification or patent under the Swamp Land Act of 1849 (9 Stat. 352) or under the Swamp Land Act of 1850 (9 Stat. 519).[3] Under its provisions unsurveyed public lands which are found to be embraced in 16th Sections formed by official protraction of existing governmental surveys are confirmed as school lands *in the same manner as though the official surveys had been regularly extended over those townships.*

The trial court rendered judgment for plaintiffs without deciding the title question, holding simply that even if these water bodies were owned by the State in its proprietary capacity, the State Agency Leasing Act (L.S.A. 30:151 et seq.) authorized the School Board to lease the property as an agency of the State.[4] The Louisiana Court of Appeal, First Circuit, reversed, holding that the State acquired the water bodies in question in its sovereign capacity upon admission into the Union in 1812, and could not be divested of title 100 years later by passage of the Protraction Act. The basis for that holding was the

[3] A survey was not required for passage of title under the Swamp Land Grants, "a personal examination" of the land being sufficient. *State of Louisiana vs. Bayou Johnson Oyster Company*, 130 La. 604, 58 So. 405; *McDade vs. Bossier Levee Board*, 109 La. 625, 33 So. 628. The evident purpose of the Protraction Act was to eliminate the burden and costs of surveying 16th Sections in "swamp townships" not requiring survey as to the balance of the land and where land values were too low to justify this expense.

[4] This holding does not involve a federal question, but only the construction of a State Statute, and the petition (p. 8) so concedes.

factual finding that Mud Hole Bay and Mud Hole Bayou are navigable bodies of water and were so prior to and at the time Louisiana became a State. Accordingly, the exclusive right of the State to lease the water bottoms under the State Leasing Act (L.S.A. 30:121 et seq.) was upheld. The Appeal Court decision became final when the Louisiana Supreme Court denied Plaintiffs' application for a writ of review.

SUMMARY OF ARGUMENT.

1. Mud Hole Bay and Mud Hole Bayou are not part of the 16th Section here involved. They are expressly excluded from said section by the provisions of the Acts of April 21, 1806 and March 3, 1811, and are also impliedly excluded since said acts relate only to the public lands of the Orleans Territory. "Public lands" do not include the soil beneath navigable water bodies. The School Land Indemnity Acts remove any doubt concerning this interpretation by providing for "in lieu" lands to compensate for deficiencies in school sections resulting from natural causes, such as intrusive navigable water bodies.

2. Under the "equal footing clause" of the Constitution, each new State acquired, by virtue of its inherent sovereignty, the soil beneath its inland navigable waters upon its admission into the Union, except such as may have been disposed of during the territorial period by special laws which were impelled by international duty or public exigency, and even then a presumption against disposal obtained. Under these principles there was no disposi-

tion of the navigable water bodies of the Orleans Territory by the Acts of 1806 and 1811. *These acts are not special laws relating to particular water bodies, but general laws relating to all public lands in the Orleans Territory.* They not only fail to overcome the presumption against disposal, but clearly show an intention not to dispose.

3. Assuming that Congress intended by the Acts of 1806 and 1811 to include navigable water bodies in the 16th Sections reserved for schools, such reservations are not *in praesenti* and are subject to withdrawal or other disposition until the school title actually vests. In the present case the school title could not attach until the Protraction Act of 1912 since the property was never surveyed. In the meantime the water bodies were automatically "disposed of" when title thereto passed to Louisiana in 1812 under the "equal footing clause" of the Constitution.

4. The State is not prevented from asserting its sovereignty ownership of Mud Hole Bay and Mud Hole Bayou because of the selection of the 16th Section here involved under the Swamp Land Grant of 1849, and the rejection thereof as land previously reserved for schools. As a matter of law, such selection and rejection covered only the swamp land within the outlines of the unsurveyed section, and did not include the navigable water bodies therein. Additionally, a 16th Section does not exist until surveyed, and the rejection thereof could only be of such property as would be a part of the section when surveyed. This would exclude the water bodies in dispute.

Finally, the Land Department's ruling could not, in any event, bind the State because its decisions are binding only with respect to matters falling within its jurisdiction. The Land Department had no jurisdiction with respect to the navigable water bodies here involved.

ARGUMENT.

Petitioners state that the federal question posed herein is whether the *entire 16th Section* is school land even though parts thereof are navigable waters. The real issue is whether the navigable water bodies in dispute are public lands reserved for school purposes, or whether they are sovereignty owned. Petitioners' statement is erroneous in that it assumes the water bodies to be a part of the section.

It is also stated in the petition that this action is one of first impression presenting a public question of vital importance. Quite to the contrary, this case rests on principles long established by decisions of this Court. These principles are decisive of this case. Petitioners were confronted with these decisions in the State Courts, and elected to ignore them. A reading of the petiton herein reflects that they continue to do so.

I.

MUD HOLE BAY AND MUD HOLE BAYOU FORM NO PART OF SECTION 16, T-21-S, R-14-E, AND HENCE THE PRESENT APPLICATION MUST BE DENIED BOTH ON JURISDICTIONAL GROUNDS AND ON THE MERITS.

Jurisdiction herein is predicated entirely on 28 U.S.C.A. 1257 (3), providing for the review of a State Court decision by writ of certiorari where any title or right is set up or claimed under the Constitution, Treaties or Statutes of the United States. Petitioners' case is based entirely on the Acts of April 21, 1806 and March 3, 1811, reserving for schools rectangular 16th Sections to be thereafter created by the governmental surveys. If Mud Hole Bay and Mud Hole Bayou were not part of the 16th Section here involved, their claim thereto cannot be based on nor asserted under these acts, and jurisdiction herein is entirely lacking.

The Act of May 18, 1796 (1 Stat. 464), relating to the territory northwest of the Ohio River and above the mouth of the Kentucky, established the rectangular system of surveying the public lands. It provides for townships 6 miles square, subdivided into 36 sections, each 1 mile square, but authorized departure therefrom where impracticable due to *"navigable rivers,"* prior surveys or grants, etc., and the creation of fractional townships and fractions of sections in those situations. The Acts of April 21, 1806 and March 3, 1811, adopted the same method of survey. It should be noted, however, that Section 2 of the

Act of 1811, applicable to the entire Orleans Territory out of which the State of Louisiana was erected (Act of February 20, 1811, 2 Stat. 641; Act of April 8, 1812, 2 Stat. 701), additionally provides that where lands are adjacent to water courses the surveyors are authorized to vary the regular method of survey as relates to the *contents of the tracts* and to the angles and boundary lines, and to lay out radiating lots or sections, fronting on the water courses, of certain specified dimensions and "of such shape and bounded by such lines as the nature of the country will render practicable and most convenient". Such sections, even though numbered 16, are not lands reserved for schools, the school reservations being limited to sections created by rectangular survey. *Board of Directors vs. New Orleans Land Company,* 138 La. 32, 70 So. 27; *Bres vs. Louviere,* 37 La. Ann. 736; *Lauve vs. Wilson,* 114 La. 699, 38 So. 522.

These provisions clearly show the Congressional intention to exclude navigable water bodies from the governmental surveys. If the intention had been otherwise, the provisions covering fractional townships and fractional and radiating sections would be entirely meaningless.

The same intention is expressed in the stated purposes of the Acts of 1806 and 1811. These acts relate entirely to the *public lands* of the Orleans Territory. They provide for the survey of the *"public lands"*, and authorize the President to direct the sale of the *"public lands"* so surveyed, except the 16th Section to be reserved for schools. Obviously, unless navigable water bodies are part of the "public land" they are entirely beyond the coverage of these statutes.

In *Mann vs. Tacoma Land Company*, 153 U.S. 273, 38 L. Ed. 714, the court denied the right of plaintiff to locate certain scrip issued under Act of Congress upon the tidelands of the State of Washington. The court there said:

> "It is settled that the general legislation of Congress in respect to public lands *does not extend to tide lands.* There is nothing in the act authorizing the Valentine scrip, or in the circumstances which gave occasion for its passage, to make an exception to the general rule. It provided that the scrip might be located on the unoccupied and unappropriated public lands, but the term 'public lands' *does not include tide lands.*
>
> * * * *
>
> "That there was no intent in the Valentine Scrip Act to make any exception to the general rule is evident not merely from the use of a term having such an accepted meaning, but from the further provision that the land 'if unsurveyed when taken, to conform, when surveyed, *to the general system of United States land surveys' for under that general system surveys are not extended to tide lands, nor those under navigable rivers above tide waters.*" (Italics ours.)

And for other cases so holding see: *Pollard vs. Hagan*, 3 How. 212, 11 L. Ed. 565; *Shively vs. Bowlby*, 152 U.S. 1, 38 L. Ed. 331; *Justheim vs. McKay*, 229 Fed. (2) 29 (cert. denied 351 U.S. 933).

It is also well settled that "public lands" include only such as are subject to sale or other disposition under *general laws. Newhall vs. Sanger*, 92 U.S. 761,

23 L. Ed. 769; *Union Pacific Railroad Company vs. Harris,* 215 U.S. 386, 54 L. Ed. 246; *Borax Consolidated vs. City of Los Angeles,* 296 U.S. 10, 56 S. Ct. 23; *Minnesota vs. Hitchcock,* 185 U.S. 373, 46 L. Ed. 954; *Justheim v. McKay,* 229 Fed. (2) 29 (cert. denied, 351 U.S. 933). This excludes Mud Hole Bay and Mud Hole Bayou from that classification. It has long been recognized by this Court that the United States has *never disposed* of the soil beneath navigable waters *by general laws.* During the territorial period, disposals even by *special laws* were not undertaken, except in limited cases where impelled by international duty or public exigency. *Shively vs. Bowlby,* 152 U.S. 1, 38 L. Ed. 331; *Mann vs. Tacoma Land Co.,* 153 U.S. 273, 38 L.Ed. 714; *McGilvra vs. Ross,* 215 U.S. 70, 54 L. Ed. 95; *United States vs. Holt State Bank,* 270 U.S. 49, 46 S. Ct. 197.

Specifically, this Court has held that 16th and 36th Sections reserved for schools can be created only out of the public land, *"for no other lands in our land system are subdivided into sections." Missouri K. & T. Railroad Company vs. Roberts,* 152 U.S. 114, 38 L. Ed. 377; *Minnesota vs. Hitchcock,* 185 U.S. 373, 46 L. Ed. 954. See also *Shively vs. Bowlby, supra.*

So elementary are these rules of survey that the Manual of Instructions for Survey of the Public Lands of the United States (1947) prepared by the Bureau of Land Management provides (Sec. 4) that "the beds of navigable bodies of water are not *public domain* and are not subject to *survey* and disposal by the United States."

If more should be needed, it can be found in the School Land Indemnity Acts. These acts provide for the selection of indemnity school lands when a school

section is fractional in quantity or where wanting by reason of the township being fractional *or from any natural cause' whatever.*[5] Obviously the typical natural cause of a fractional or wanting section is the intrusion of navigable water bodies into the land areas.

Specific application of the Indemnity Acts to sections lacking full acreage because of navigable water bodies is found in the decision of the Secretary of Interior in State of Idaho, 37 Interior Decisions, 430, 433:

> "Where a permanent body of water, such as a lake, etc., occurs, and the township in which it is embraced, or the several townships surrounding it, as the case may be, are thereby rendered fractional, it is evident that only those portions of such townships as are susceptible of being surveyed may properly be regarded as land, and if in such cases the school sections are not surveyed, under the rules of adjustment established by Congress, the area of such land as the township is found to contain will determine the quantity of school land to which the State is entitled."

The Indemnity Acts were passed long before the Protraction Act of 1912, and hence did not affect vested rights under the Acts of 1806 and 1811. Moreover, even if they had been enacted after that statute, they would still be a clear interpretation by Congress that it was never intended by the Acts of 1806 and

---

[5] The Act of May 20, 1826 (4 Stat. 179) is the earliest of the indemnity acts. These acts are now codified under 43 U.S.C.A. 851 et seq.

1811 to extend the governmental surveys to navigable waters.

The extension of the outer lines of Section 16 by protraction to include portions of Mud Hole Bay and Mud Hole Bayou cannot make these water bodies part of the section.[6] The Protraction Act reserved for schools such 16th Sections as would have been created had the official governmental surveys been regularly extended over the public lands. If the section had been regularly surveyed, Mud Hole Bay and Mud Hole Bayou would have been excluded. Moreover, Congress could not in 1912 divest the State's title to navigable water bodies which, as later shown herein, had vested in the State a full century before.

II.

WITHOUT REGARD TO THE SURVEY PRINCIPLES DISCUSSED IN THE PRECEDING SECTION, THE STATE OF LOUISIANA ACQUIRED IN A PROPRIETARY CAPACITY BY VIRTUE OF ITS INHERENT SOVEREIGNTY THE BOTTOMS OF ALL NAVIGABLE INLAND WATERS WITHIN ITS BOUNDARIES UPON ADMISSION INTO THE UNION IN 1812 FREE OF ANY RESERVATION OF LANDS FOR PUBLIC SCHOOLS.

In the light of the numerous decisions of this Court extending over a period in excess of 100 years, it is

[6] It should be noted at this point that the outer lines of Section 16 were projected by the governmental surveyors at the time of the partial survey of the township, without knowledge of the existence or location of the water bodies here involved, and are not lines which were "protracted" after the Protraction Act of 1912 with the intent to include these water bodies in the section.

not open to dispute that each new State entering the Union became vested with title to the soil beneath inland navigable waters within its borders by virtue of its inherent sovereignty under the so-called "equal footing clause" of the Constitution. The 13 original States having reserved these water bodies as an attribute of their sovereignty, the new States were entitled to the same rights under the constitutional principle of equality among the states—the purpose of the Constitution being to create a union of "political equals". *Pollard vs. Hagan,* (1845), 3 How. 212, 11 L. Ed. 565; *Knight vs. United Land Association,* 142 U.S. 161, 35 L. Ed. 974; *Shively vs. Bowlby,* 152 U.S. 1, 38 L. Ed. 331; *Mann vs. Tacoma Land Co.,* 153 U.S. 273, 38 L. Ed. 714; *United States vs. Mission Rock Co.,* 189 U.S. 391, 47 L. Ed. 865; *Scott vs. Lattig,* 227 U.S. 229, 57 L. Ed. 490; *Oklahoma vs. Texas,* 258 U.S. 574, 42 S. Ct. 406; *United States vs. Holt State Bank,* 270 U.S. 49, 46 S. Ct. 197; *Mass. vs. New York,* 271 U.S. 65, 46 S. Ct. 357; *United States vs. Oregon,* 295 U.S. 1, 55 S. Ct. 610; *Borax Consolidated vs. City of Los Angeles,* 296 U.S. 10, 56 S. Ct. 23; *United States vs. California,* 332 U.S. 19, 67 S. Ct. 1658; *United States vs. Louisiana,* 339 U.S. 699, 70 S. Ct. 914; *United States vs. Texas,* 339 U.S. 707, 70 S. Ct. 918; *United States vs. Louisiana, et al.,* 363 U.S. 1, 80 S. Ct. 961.

Petitioners recognize the foregoing rule, but deny that it has application in this case. Simply stated, their contentions are that:

(1) Prior to Statehood title to the entire Territory of Orleans was vested in the United States, including soil beneath navigable inland waters, and under Article 4, Section 3, Cl 2 of the Constitution, the general government had the abso-

lute and unlimited power during the territorial period to dispose of said water bottoms to the prejudice of the future states;

(2) By the Acts of April 21, 1806 and March 3, 1811, reserving for schools the 16th section of each township to be thereafter created by survey of the public lands, Congress did so dispose of Mud Hole Bay and Mud Hole Bayou, such reservation "freezing" title in the United States until the school title could attach either by actual survey or under the Protraction Act of 1912.

Even if we eliminate the considerations set forth in Section I of this brief, which, we submit, are conclusive, these contentions are entirely without foundation.

Article IV, Sec. 3, Cl 2 of the Constitution gives Congress power to dispose of the "Territory and other property belonging to the United States", but this does not include the unqualified right to dispose of the bottoms of navigable inland waters of a territory to the prejudice of the sovereign rights of the future states as guaranteed by the "equal footing clause" of the Constitution. To so construe that power would completely nullify the equal footing clause. Obviously, the Constitution cannot guarantee the future states their navigable water bottoms and at the same time reserve to the general government the full and absolute right to dispose of them in the meantime.

Under numerous decisions of this Court the "power to dispose" is conditioned and limited with respect

to property affected by the "equal footing clause". In the present case these limits and conditions were clearly not met.

We concede that title to the bottoms of inland navigable waters in the Orleans Territory was actually vested in the United States during the territorial period. *Shively vs. Bowlby* (1893), 152 U.S. 1, 38 L. Ed. 331. However, this Court has always held that such title was held *in trust* for the ultimate benefit of the future states to be erected out of the territory. *Pollard vs. Hagan,* 3 How. 212, 11 L. Ed. 565; *San Francisco vs. LeRoy,* 138 U.S. 656, 34 L. Ed. 1096; *Knight vs. United Land Association,* 142 U.S. 161, 35 L. Ed. 974; *Shively vs. Bowlby,* 152 U.S. 1, 38 L. Ed. 331; *United States vs. Holt State Bank,* 270 U.S. 49, 46 S. Ct. 197; *United States vs. Mission Rock Company,* 189 U.S. 391, 47 L. Ed. 865; *Borax Consolidated vs. City of Los Angeles,* 296 U.S. 10, 56 S. Ct. 23.

In consequence of said trust, a strict construction has been adopted in considering whether a particular grant effected an alienation of navigable water bodies prior to Statehood, it being held that a "presumption against their separation must be indulged in construing these grants", and that "disposals by the United States during the territorial period are not lightly to be inferred, and should not be regarded as intended unless the intention was declared or otherwise made very plain". *Massachusetts vs. New York,* 271 U.S. 65, 46 S. Ct. 357; *United States vs. Holt State Bank,* 270 U.S. 49, 46 S. Ct. 197; *United States vs. Oregon,* 295 U.S. 1, 55 S. Ct. 610.

In keeping with that strict construction, it has been judicially recognized from the earliest times that *"Congress has never undertaken by general laws* to dispose of land below high water mark during the territorial period, and that in no event are such conveyances made, even by *special laws,* unless they become necessary in order to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several states, or to carry out other public purposes appropriate to the objects of which the United States hold the territory". *Shively vs. Bowlby,* 152 U.S. 1, 38 L. Ed. 331; *Mann vs. Tacoma Land Company,* 153 U.S. 273, 38 L. Ed. 714; *McGilvra vs. Ross,* 215 U.S. 70, 54 L. Ed. 95; *United States vs. Holt State Bank,* 270 U.S. 49, 46 S. Ct. 197.

The Acts of April 21, 1806 and March 3, 1811 do not meet the conditions and requirements for disposal of navigable water bottoms during the territorial period for obvious reasons: (1) they are not *special laws,* dealing with particular water bodies, but general laws relating to *public lands in the entire Orleans Territory;* and (2) not only do these acts fail to overcome the strong presumption against disposal, but they contain express provisions showing that navigable water bodies were to be excluded from the school sections to be thereafter created by the public surveys.

The cases of *State of Alabama vs. State of Texas,* 347 U.S. 272, 74 S. Ct. 481, and *United States vs. Holt State Bank,* 270 U.S. 49, 46 S. Ct. 197, cited by petitioners, do not support their case.

In the *Alabama* case, the court upheld the validity of the Submerged Land Act expressly granting coastal water bottoms to certain States. However, the case did not cover the sovereign right of a State to its navigable water bottoms upon entry into the Union, but only the right of the general government to convey property to a particular State *after its admission.* This in no way involves the "equal footing" principle. In *Justheim vs. McKay,* 229 Fed. (2) 29 (*Cert. denied,* 351 U.S. 933), the court commenting on this case pointed out that the Submerged Lands Act is a *special act,* and while the lands beneath navigable waters, may be disposed of by *special enactment,* this may not be done by *general* laws. The *Holt State Bank* case, recognized that the general government could dispose of the bottoms of navigable inland waters during the territorial period, but had never undertaken to do so by *general laws.* Even though the "grant" there involved was special, the Court, applying the presumption against disposal, ruled that none was intended, and that title to the water bottoms in dispute vested in the State when admitted into the Union.

III.

EVEN IF ASSUMED, ARGUENDO, THAT CONGRESS INTENDED BY THE ACTS OF APRIL 21, 1806 AND MARCH 3, 1811 TO INCLUDE THE BOTTOMS OF NAVIGABLE WATERS IN THE 16TH SECTIONS TO BE THEREAFTER CREATED BY SURVEY, SOVEREIGNTY OWNERSHIP OF THE WATER BODIES IN DISPUTE WOULD STILL PREVAIL.

Petitioners concede that title to the 16th Section here involved did not pass by survey under the Acts

of 1806 and 1811, but contend that such title was reserved for schools *and remained in the United States* until the School title could vest under the Protraction Act of 1912.[7]

This position completely ignores the many decisions of this Court relating to the status of school sections prior to the time school title vests.

By a long line of cases it has been firmly established that the school land grants are not grants *in praesenti* and until there has been a passage of title by survey,[8] the lands are under the absolute and unqualified control of the general government and are subject to withdrawal from the school grants, or to other disposition free of such grants. *Heydenfeldt vs. Daney Gold & Silver Mining Company,* 93 U.S. 634, 23 L. Ed. 995; *Minnesota vs. Hitchcock,* 185 U.S. 373, 46 L. Ed. 954; *United States vs. Morrison,* 240 U.S. 190, 60 L. Ed. 599; *United States vs. Sweet,* 245 U.S. 563, 38 S. Ct. 193; *Wisconsin vs. Lane,* 245 U.S. 427, 38 S. Ct. 135; *United States vs. Wyoming,* 331 U.S. 440, 67 S. Ct. 1319; *New Mexico vs. Ickes,* 72 Fed. (2) 72 (cert. denied 293 U.S. 596); *State of Utah vs. Bradley Estates, Inc.,* 223 Fed. (2) 129 (cert. denied 350 U.S. 841).

Illustrative of the foregoing principles are the following disposals which were held to supersede *prior* school grants where the school title has not yet vested:

---

[7] Petition, pp. 19, 20: "Under the Acts of Congress enacted prior to 1812, which vested all sections numbered sixteen for school purposes the legal title to all such sixteenth sections *remained in the United States* until the sections were surveyed in place by the rectangular system of survey." Petition, p. 21: "If the Protraction Act had not been enacted, the legal title to school lands not protected by an official survey in place, *would still be in the United States.*"

[8] In this case the Protraction Act of 1912 is relied upon in place of survey.

United States vs. Wyoming, 331 U.S. 440, 67 S. Ct. 1319: The placing of a school section in a petroleum reserve by Presidential order under an Act of Congress *enacted after the school grant.*

Heydenfeldt vs. Daney Gold & Silver Mining Co., 93 U.S. 634, 23 L. Ed. 995: The passage of a law *authorizing* disposal of mineral lands to occupants and claimants. The school section in question was mineral land.

Wisconsin vs. Lane, 245 U.S. 427, 38 S. Ct. 135: The placing of a school section in a *Temporary Indian Reserve.*

United States vs. Morrison, 240 U.S. 190, 60 L. Ed. 599: The placing of a school section in a Forestry Reserve.

New Mexico vs. Ickes, 72 Fed. (2) 71 (cert. denied 293 U.S. 596): The placing of a school section in land designated for stock driveway purposes.

In several of the above cases the school sections had been previously identified by survey but the school grants were superseded because the survey had not been officially approved in the meantime.

The school land reservations in the Acts of April 21, 1806 and March 3, 1811 were superseded in 1812 as to Mud Hole Bay and Mud Hole Bayou (if we assume that these water bodies are school land) because the school title had not attached by survey, and Louisiana automatically acquired the bottoms of all inland navigable waters when it entered the Union. This title

was acquired by operation of law with the same effect as though Congress had passed a special act expressly conveying the property to Louisiana at the moment it became a State.

Petitioners' contention that the United States was required to hold land reserved for schools by the above acts in a "sort of trust" until the school title could attach is completely untenable, as it is in direct conflict with the above cases.

Moreover, this position ignores the fact that (1) by the Constitution of the United States adopted in 1789, (2) by the Treaty of Paris of April 30, 1803 (8 Stat. 202) whereby the United States acquired the Louisiana Territory, and (3) by the Enabling Act of February 20, 1811 (2 Stat. 641), providing for admission of Louisiana into the Union, the general government was required to hold all navigable inland water bodies in trust for the future State in satisfaction of its rights of sovereignty. The so-called implied "school trust" if one existed (which is denied) is inferior and must give way to the express trust previously established by the Constitution and by solemn treaty with a foreign nation.

Additionally, it would be entirely impractical and Congress could not have intended that title to unsurveyed 16th Sections be irrevocably held in trust until such title could vest by survey of the public land. Until survey no one would know what part of the public land would fall within a 16th Section, for the public surveys *create* and do not merely identify the governmental subdivisions. *State of Louisiana vs.*

Aucoin, 206 La. 786, 20 So. (2) 136; *Cox vs. Hart,* 260 U.S. 427, 43 S. Ct. 154. In *Heydenfeldt vs. Daney Gold and Silver Mining Company,* 93 U.S. 634, 23 L. Ed. 995 this Court held that a school grant "operating at once and attaching prior to the surveys of the United States, *would deprive Congress of disposing of any part of the public domain until there was a segregation by survey of the land granted.* Later, in *United States vs. Wyoming,* 331 U.S. 440, 67 S. Ct. 1319, the Court said that *"vesting in the State an immediate and irrevocable interest in the school sections before such sections had been identified by survey would be to complicate the performance of the government's obligation with respect to the public land."* Exactly the same complications would result if the United States were required to hold the title in suspense until the school title could attach.

Congress intended to place each School Land Grant State on an equal footing with the others with respect to the powers of the Federal Government in the unsurveyed school sections. *United States vs. Wyoming,* 331 U.S. 440, 67 S. Ct. 1319; *Heydenfeldt vs. Daney Gold & Silver Mining Co.,* 93 U.S. 634, 23 L. Ed. 995; *United States vs. Morrison,* 240 U.S. 190, 60 L. Ed. 599; *United States vs. Aikens,* 84 Fed. Supp. 260. The Protraction Act does not place Louisiana in a unique position in this respect as Petitioners contend. That act simply took the place of actual survey as the condition for passage of title to those unsurveyed public lands as are located within protracted 16th Sections.

IV.

THE SELECTION OF THE 16TH SECTION HERE INVOLVED AS SWAMP LAND, AND THE LAND DEPARTMENT'S REJECTION THEREOF BECAUSE PREVIOUSLY RESERVED FOR SCHOOLS, DO NOT PREVENT THE STATE FROM ASSERTING ITS SOVEREIGNTY OWNERSHIP OF MUD HOLE BAY AND MUD HOLE BAYOU.

The State selected all sections in T-21-S, R-14-E, including unsurveyed Section 16, under the Swamp Land Act of 1849 (Petitioners' Exhibit 38), and the Land Department rejected the selection of Section 16 because previously reserved for schools (Petitioners' Exhibits 39, 40). Unsurveyed Section 16 was carried on the selection list as containing 640 "estimated acres" because the actual acreage was not known.

This can in no way prejudice the rights of the State.

As a matter of law, swamp land is selected, and approved or rejected, according to the character of the land involved and without regard to the acreage or quantity thereof. As a consequence, the selection of an unsurveyed 16th Section, estimated to contain 640 acres, and the Land Department's rejection thereof, cover only lands of swamp character and do not include the sovereignty water bodies within the projected outlines of the section. Conclusive on this point are *State of Louisiana vs. Bayou Johnson Oyster Company*, 130 La. 604, 58 So. 405, and *McDade vs. Bossier Levee Board*, 109 La. 625, 33 So. 628.

Further, the 16th Section here involved did not exist until the same could be created by actual survey. Necessarily, the Department's rejection of such unsurveyed section could only be of the land which would ultimately comprise the section when finally so identified.[9] Since the public surveys do not extend to navigable water bodies, Mud Hole Bay and Mud Hole Bayou would be excluded.

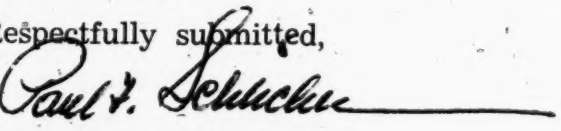
Finally, even if Louisiana's selection of unsurveyed Section 16, T-21-S, R-14-E and the rejection thereof by the Land Department embraced navigable water bodies (which is denied), the ruling would not bind the State nor affect its sovereign title to such water bodies because the jurisdiction of the Land Department does not extend thereto. The decisions of the Land Department are binding only with respect to matters within its jurisdiction. *Borax Consolidated vs. City of Los Angeles*, 296 U.S. 10, 56 S. Ct. 23; *Hardin vs. Jordan*, 140 U.S. 371, 35 L. Ed. 428; *Knight vs. United Land Association*, 142 U.S. 161, 35 L. Ed. 974; *Doolan vs. Carr*, 125 U.S. 618, 31 L. Ed. 844; *State of Louisiana vs. Bozeman*, 156 La. 635, 101 So. 4.

[9] Identification of the section by protracted lines under the Protraction Act of 1912 is not involved since the selection and rejection of Section 16 as swamp land was in the period 1850-1852.

CONCLUSION.

It is respectfully submitted that the petition for a writ of certiorari herein is entirely without merit and should be denied.

Respectfully submitted,



PAUL F. SCHLICHER,
135 East 42nd Street,
New York, New York,
Attorney for Respondent,
Texaco Inc.

WILEY G. LASTRAPES,
DANIEL P. HURLEY,
New Orleans, Louisiana,
JOHN M. DUHE, JR.,
New Iberia, Louisiana,
CHARLES F. BAILEY,
Lafayette, Louisiana,
Of Counsel.

CERTIFICATE OF SERVICE.

I, PAUL F. SCHLICHER, do hereby certify that copies of the foregoing brief in opposition to the Petition for Writ of Certiorari have been served upon Counsel of Record for Petitioners, by depositing the same on the 3. day of May., 1966 in the United States Post Office at New York, New York, with air mail postage prepaid, addressed to said Counsel of Record at their Post Office addresses as follows:

Mr. Lloyd J. Cobb,
Mr. Mettery I. Sherry, Jr.,
Messrs. Cobb & Wright,
902 Whitney Building,
New Orleans, Louisiana.

Mr. Wilmore J. Broussard, Jr.,
303 Ledet Building,
Houma, Louisiana.

Mr. Herbert W. Christenberry, Jr.,
1550 National Bank of Commerce Building,
New Orleans, Louisiana.

May 3., 1966.

Paul F. Schlicher

PAUL F. SCHLICHER,
Attorney for Respondent, Texaco Inc.

FILE COPY

Office-Supreme Court, U.S.
FILED
MAY 4 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 1133

TERREBONNE PARISH SCHOOL BOARD, FOR THE USE AND BENEFIT OF THE PUBLIC SCHOOLS OF TERREBONNE PARISH, ROBERT D. STERLING, RUTH L. STERLING AND ROBERT W. O'MEARA,
Petitioners,

versus

TEXACO INC.,
Respondent,

STATE OF LOUISIANA AND STATE MINERAL BOARD,
Intervenors-Respondents.

CONCURRENCE IN BRIEF OF RESPONDENT, TEXACO INC. OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

JACK P. F. GREMILLION,
Attorney General,
JOHN L. MADDEN,
EDWARD M. CARMOUCHE,
JOHN A. BIVINS,
State Capitol,
Baton Rouge, Louisiana,
Attorneys for The State of Louisiana and The State Mineral Board, Intervenors-Respondents.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 1133.

TERREBONNE PARISH SCHOOL BOARD, FOR THE USE AND BENEFIT OF THE PUBLIC SCHOOLS OF TERREBONNE PARISH, ROBERT D. STERLING, RUTH L. STERLING AND ROBERT W. O'MEARA,
Petitioners,

versus

TEXACO INC.,
Respondent,

STATE OF LOUISIANA AND STATE MINERAL BOARD,
Intervenors-Respondents.

CONCURRENCE IN BRIEF OF RESPONDENT, TEXACO INC. OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

CONCURRENCE OF THE STATE OF LOUISIANA AND THE STATE MINERAL BOARD.

The State of Louisiana and the State Mineral Board, Intervenors-Respondents, occupy the same position as Respondent, Texaco Inc. in opposing the petition for a writ of certiorari herein, and said parties join and concur in

the brief filed by Respondent in opposition to said petition and adopt the same as their own.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
JOHN L. MADDEN,
EDWARD M. CARMOUCHE,
JOHN A. BIVINS,

By John L Madden
.....
Attorneys for The State of Louisiana and The State Mineral Board, Intervenors-Respondents.

CERTIFICATE OF SERVICE.

I, John L. Madden, do hereby certify that copies of the foregoing concurrence in the brief of Respondent, Texaco Inc., opposing the petition for a Writ of Certiorari, have been served upon Counsel of Record for Petitioners, by depositing the same on the 3. day of May, 1966 in the United States Post Office at Baton Rouge, Louisiana, with air mail postage prepaid, addressed to said Counsel of Record at their Post Office addresses as follows:

Mr. Lloyd J. Cobb,
Mr. Mettery I. Sherry, Jr.,
Messrs. Cobb & Wright,
902 Whitney Building,
New Orleans, Louisiana,

Mr. Wilmore J. Broussard, Jr.,
303 Ledet Building,
Houma, Louisiana,

Mr. Herbert W. Christenberry, Jr.,
1550 National Bank of Commerce Building,
New Orleans, Louisiana.

May 3, , 1966.

John L Madden
.....

Attorney for Intervenors-Respondents, The State of Louisiana and The State Mineral Board.